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JOHN T. FEY, Clerk

In the

United States Court of Appeals

For the Seventh Circuit

No. 12046

CITY MESSENGER OF HOLLYWOOD, INC., A California corporation, doing business under the tradename of CITY MESSENGER AIR EXPRESS,

Plaintiff-Appellant,

vs.

CITY BONDED MESSENGER SERVICE, INC., by change of name from CITY BONDED MESSENGER AND TRUCKING SERVICE, INC., an Illinois corporation, CITY BONDED TRUCKING COMPANY, INC., an Illinois corporation, THE ILLINOIS BELL TELEPHONE COMPANY, an Illinois corporation, and the REUBEN H. DONNELLEY CORPORATION, an Illinois corporation,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

Honorable
John P. Barnes,
Judge Presiding.

Appellant's Appendix

HARRY G. FINS
77 West Washington Street
Suite 1521
Chicago 2, Illinois
and
NORMAND A. COHEN
188 West Randolph Street
Suite 1515
Chicago 1, Illinois
Attorneys for Plaintiff-Appellant

UNITED STATES LAW PRINTING CO., CHICAGO 18, ILL. LAKEVIEW 5-6581

INDEX

PAGE

Prefix to Record in Accordance with Rule 12(c) of the Rules of the United States Court of Appeals for the Seventh Circuit 1-4

Complaint filed April 19, 1955 4-16

Exhibit "A" to Complaint—Civil Aeronautics Board Letter of Registration Inc., ... 17

Answer of City Bonded Messenger & Trucking Service, Inc., filed June 28, 1955 18-23

Count I of Counterclaim of City Bonded Messenger & Trucking Service, Inc., filed June 28, 1955 24-28

Count III of Counterclaim of City Bonded Messenger & Trucking Service, Inc., filed August 12, 1957 28-31

Defendants' Exhibit 7—Letter of Silverman & Mullin 32-33

Answer to Counts I and III of the Counterclaim filed September 1, 1955 34-37

Count II of Counterclaim of City Bonded Messenger & Trucking Service, Inc., Irving Mansfield and Nadine Mansfield, filed September 27, 1955 38-41

Defendants' Exhibit 7—Telegram 41

Answer to Count II of Counterclaim filed October 11, 1955 42-43

Order dismissing Defendants' Nadine Mansfield and Irving Mansfield entered February 21, 1957 43

Count IV of Counterclaim of City Bonded Messenger Service, Inc., and City Bonded Trucking Company, Inc., filed February 28, 1957 44-45

PAGE

REPORT OF PROCEEDINGS

Witnesses for Plaintiff-Counter-Defendant

Testimony of:

Breitbarth, Walter Herman 123-125

Fullman, Benjamin 58-90, 133-134, 191-194

Fullman, Sidney B. 90-102, 113-122, 195-196

Gilbert, Rubie Mylo 129-133

Mansfield, Irving 46-58

Roth, Alfred 126-128

Schelli, William C. 109-113

Schude, A. J. 189-191

Young, Robert M. 107-109

Witnesses for Defendants-Counter-Claimants

Testimony of:

Bittman, Abraham 185-186

Cuny, Charles H. 171-174

Fullman, Benjamin 133-134

Fullman, Norvin 157-159

Gilbert, Willard 186-189

Gootnick, Ivy 159-161

Hanson, William 166-168

Mansfield, Elias 102-106

Mansfield, Irving 134-157, 196-197

PAGE

Maurice, Anne M. Lombard 161-166

McArthur, Robert Charles 169-171

Rooney, John F. 168-169

Siegel, Rose 174-185

Motion to dismiss Nadine Mansfield and Irving Mansfield 128-129

Certificate of Court Reporter 197

Plaintiff's Exhibit 1—Forwarder Airbill 198

Plaintiff's Exhibit 7—Civil Aeronautics Board Letter of Registration No. 163 199

Plaintiff's Exhibit 10—Corporate Charter of Plaintiff 200-202

Defendants' Exhibit 42—Advertisement 203

Findings of Fact entered March 14, 1957 204-212

Conclusions of Law entered March 14, 1957 212-213

Judgment Order entered March 14, 1957 213-215

Notice of Appeal filed April 11, 1957 215

Certificate of Clerk of District Court 216-218

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CITY MESSENGER OF HOLLYWOOD, INC., A California corporation, doing business under the tradename of CITY MESSENGER AIR EXPRESS,

Plaintiff-Appellant,

vs.

CITY BONDED MESSENGER SERVICE, INC., by change of name from CITY BONDED MESSENGER AND TRUCKING SERVICE, INC., an Illinois corporation, CITY BONDED TRUCKING COMPANY, INC., an Illinois corporation, THE ILLINOIS BELL TELEPHONE COMPANY, an Illinois corporation, and the REUBEN H. DONNELLEY CORPORATION, an Illinois corporation,

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Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

Honorable John P. Barnes, Judge Presiding.

Appellant's Appendix

1

IN THE UNITED STATES DISTRICT COURT

(Civil Action—No. 55 C 575)

PREFIX TO RECORD IN ACCORDANCE WITH RULE 12(c) OF THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

On April 19, 1955, the plaintiff filed a Complaint in the above entitled cause. The plaintiff was City Messenger of Hollywood, Inc., a California corporation, doing business under the trade name of City Messenger Air Express, and the defendants were City Bonded Messenger & Trucking Service, Inc., an Illinois corporation, Irving Mansfield, Nadine Mansfield, Illinois Bell Telephone Company, an Illinois corporation, and The Reuben H. Donnelley Corporation, an Illinois corporation. City Bonded Messenger and Trucking Service, Inc., an Illinois corporation,

2 changed its name, during the pendency of the above entitled action, to City Bonded Messenger Service, Inc., and City Bonded Trucking Company, Inc., an Illinois corporation, was added as a defendant herein during the trial of the cause. On April 27, 1955, the Illinois Bell Telephone Company, an Illinois corporation, filed an Answer, Counterclaim and Cross-Claim. On April 27, 1955, the Reuben H. Donnelley Corporation, an Illinois corporation, filed an Answer, Counterclaim and Cross-Claim. On June 28, 1955, the City Bonded Messenger and Trucking Service, Inc., Irving Mansfield and Nadine Mansfield filed an Answer and Counterclaim, to-wit: Count I of the Counterclaim was by the City Bonded Messenger and Trucking Service, Inc. and Count II of the Counterclaim was by City Bonded Messenger and Trucking Service, Inc., Irving Mansfield and Nadine Mansfield. On August 12, 1955, by

leave of court on motion, City Bonded Messenger and Trucking Service, Inc., filed Count III to the Counterclaim. On September 1, 1955, the plaintiff filed a motion to strike Count II of the Counterclaim, and filed an Answer to Counts I and III of the Counterclaim. On September 14, 1955, the motion to strike Count II of the Counterclaim was withdrawn and leave was given to defendants to file an Amended Count II of the Counterclaim. On September 27, 1955, an Amended Count II of the Counterclaim

3 was filed. On October 11, 1955, the plaintiff filed an Answer to Amended Count II of the Counterclaim. The trial was had before the Honorable John P. Barnes on February 15, 18, 19, 20, 21, 25, 26 and 27, and March 1, 1957. On February 21, 1957, when the plaintiff rested his case, Nadine Mansfield and Irving Mansfield were dismissed as defendants. On February 28, 1957, City Bonded Messenger Service, Inc. and City Bonded Trucking Company, Inc., filed Count IV of the Counterclaim. On March 14, 1957, the court entered findings of fact, conclusions of law and judgment order. The judgment order contained an injunction against the plaintiff and referred the cause to a Master in Chancery for an accounting, assessment of costs, treble damages and attorneys fees against the plaintiff. On March 14, 1957, the court also entered an injunction order against the defendants Illinois Bell Telephone Company and The Reuben H. Donnelley Corporation. On April 8, 1957, an order was entered commanding the plaintiff to file $7,500.00 security for costs in addition to the security bond for $250.00, previously filed by plaintiff. On April 11, 1957, the plaintiff filed a Notice of Appeal from the judgment order of March 14, 1957, and a bond on appeal in the sum of $250.00. On April 19, 1957, a motion was filed for a rule to show cause why the plaintiff should not be held in contempt for violating the injunction of March 14, 1957, to which motion the plaintiff

filed an Answer on April 24, 1957, and the Counter-
4 claimants filed a Reply to said Answer on April 26, 1957. On April 19, 1957, a motion was filed for rule to show cause why the plaintiff should not be held in contempt of court for failure to comply with the order of April 8, 1957, for the filing of $7,500.00 additional security. On April 29, 1957, both motions of April 19, 1957, were continued generally.

6

IN THE UNITED STATES DISTRICT COURT

(Civil Action—No. 55 C 575)

COMPLAINT

[Filed April 19, 1955]

Plaintiff, City Messenger of Hollywood, Inc., a California corporation doing business under the trade name of City Messenger Air Express, complaining of the defendants, City Bonded Messenger & Trucking Service, Inc., an Illinois corporation, Irving Mansfield, Nadine Mansfield, Illinois Bell Telephone Company, an Illinois corporation, and The Reuben H. Donnelley Corporation, an Illinois corporation, states as follows:

1. Plaintiff, City Messenger of Hollywood, Inc., is a corporation duly incorporated and existing under the laws of the State of California and is engaged, pursuant to authority granted by the Civil Aeronautics Board, in the business of an Air Freight Forwarder in interstate commerce under the trade name of City Messenger Air Express.

2. The defendant, City Bonded Messenger & Trucking Service, Inc., is a corporation incorporated and existing under the laws of the State of Illinois. The defendants, Irving Mansfield and Nadine Mansfield, are both citizens of

the State of Illinois, and are the President and Secretary respectively of said defendant corporation.

3. The defendant, Illinois Bell Telephone Com-
7 pany, is a corporation incorporated and existing under the laws of the State of Illinois, and is engaged in the business of providing telephone service and facilities to its subscribers. In connection with its business said defendant periodically publishes an alphabetical telephone directory for the Chicago area. The defendant, The Reuben H. Donnelley Corporation, is a corporation incorporated and existing under the laws of the State of Illinois, and in connection with its busine as a publisher periodically publishes the Chicago Classified Telephone Directory.

4. The matter in controversy herein exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars ($3,000.00).

5. Said plaintiff is qualified, and duly registered with the Civil Aeronautics Board to engage in business as an Air Freight Forwarder in interstate commerce under the trade name of City Messenger Air Express, pursuant to a certain Letter of Registration No. 163 issued to the Plaintiff on May 21, 1954 by the Civil Aeronautics Board under the provisions of Part (Section) 296 of the Economic Regulations of the Civil Aeronautics Board (Title 14, Code of Federal Regulations, Subchapter B—Economic Regulations, Part 296) relating to indirect air transportation of property between places in the continental United States. A photostatic copy of said Letter of Registration is attached hereto and made a part hereof as Plaintiff's Exhibit "A".

6. Part 296.1 of the said Economic Regulations of the Civil Aeronautics Board (Title 14, Code of Federal Regulations, *supra*) defines an "Air Freight Forwarder" as follows:

> "An air freight forwarder shall be defined to mean any person which engages indirectly in air transporta-

tion of property only, and which, in the ordinary and usual course of his undertaking, (a) assembles and consolidates or provides for assembling and consolidating such property and performs or provides for the performance of breakbulk and distributing operations with respect to such consolidated shipments, (b) assumes responsibility for the transportation of such property from the point of receipt to the point of destination, and (c) utilizes for the whole or any part of the transporation of such shipments, the services of a direct air carrier subject to the act."

8 7. Part 296.6 of the said Economic Regulations of the Civil Aeronautics Board (Title 14, Code of Federal Regulations, supra), which provides that no person may engage in the business of an Air Freight Forwarder without first obtaining a Letter of Registration issued by the Civil Aeronautics Board, reads as follows:

"No person shall engage in air transportation pursuant to the exemption granted by this part unless there is in force with respect to such person a letter of registration issued by the Board."

8. The defendant, City Bonded Messenger & Trucking Service, Inc., is not and has never been licensed by or registered with the Civil Aeronautics Board to engage in business as an Air Freight Forwarder in interstate commerce, either under its own name or in the name of City Messenger Air Express.

9. Part 296.16 of the Economic Regulations of the Civil Aeronautics Board (Title 14, Code of Federal Regulations, supra), dealing with the business name or names under which an Air Freight Forwarder may do business, provides in part as follows:

"On and after Nov. 15, 1952, it shall be an express condition upon exercise of the privileges granted by this part and the letters of registration issued hereunder, that the air freight forwarder concerned, in holding out to the public and in performing air trans-

portation services shall do so only in a name the use of which is authorized under the provisions of this section.

"(a) Except as otherwise provided under par. (b) of this section, an air freight forwarder may do business in the name in which its letter of registration is then issued and outstanding, including abbreviations, contractions, initial letters, or other minor variations of such name which are readily identifiable therewith.

"(b) An air freight forwarder may do business in such other and different name or names as the Board may by order permit, upon a finding that the use of such other name or names is not contrary to the public interest."

10. In connection with plaintiff's operations as an authorized Air Freight Forwarder, said plaintiff is licensed to do business as a foreign corporation in New York and Illinois, and maintains offices and telephone listings under the name of City Messenger Air Express and City Messenger Service in various cities throughout the United States, including the following:

	City	*Address*	*Telephone*
(a)	New York, New York	203 E. 36th Street New York 16, N. Y.	Murray Hill 5-1166
(b)	Chicago, Illinois	845 S. Wabash Ave. Chicago 5, Illinois	Wabash 2-1850
(c)	Hollywood, California	1414 Cole Place Los Angeles 28, Cal.	Hollywood 4-1188
(d)	Los Angeles, California	727 W. 7th Los Angeles, Cal.	Mutual 8191
(e)	Bevery Hills, California	300 S. Beverly Drive Beverly Hills, Cal.	Crestwood 5-0183

In addition, plaintiff employs in connection with its nationwide operations exclusive agents in numerous other cities and communities in the United States, including San Francisco, Cleveland, Dayton and Philadelphia, to process, on behalf of City Messenger Air Express at agreed upon compensatory rates, plaintiff's inbound and outbound air shipments, and to promote and sell City Messenger Air Express service to local shippers. Such exclusive agents are required to render periodic reports and accountings to City Messenger Air Express, 1414 Cole Place, Hollywood, California, of all prepaid and collect shipments handled in their particular city, and are required and directed to consign all shipments to City Messenger Air Express, c/o the agent's concern.

11. That on or about the month of June, 1954, the plaintiff employed the defendant, City Bonded Messenger and Trucking Service, Inc., as its exclusive agent in the City of Chicago, Illinois, to process plaintiff's City Messenger Air Express inbound and outbound air shipments, and to promote and sell City Messenger Air Express service to shippers in the Chicago area. Said defendant was at that time advised by the plaintiff of the applicable tariff rates covering such air shipments, was advised and instructed that all shipments were to be consigned to City Messenger Air Express, c/o the said defendant, was advised and instructed to render periodic reports and accountings to the plaintiff on all prepaid and collect shipments, and was otherwise advised and instructed by the plaintiff as to the procedures for processing said air shipments.

12. The said defendant, City Bonded Messenger & Trucking Service, Inc., acted as the exclusive Chicago agent for the plaintiff, for purposes of processing plaintiff's City Messenger Air Express inbound and outbound air shipments, until on or about December 29, 1954, at which time

the said defendant, through Irving Mansfield, its President and co-defendant herein, suddenly notified the plaintiff that the said defendant firm no longer had the time to devote to City Messenger Air Express service.

13. The plaintiff has now discovered, and alleges the facts to be that the said defendant firm, in conjunction with its principal officers, Irving Mansfield and Nadine Mansfield, co-defendants herein, did, during the period from the month of June, 1954, to on or about December 29, 1954, while acting and purporting to act as exclusive Chicago agent for the plaintiff for purposes of processing plaintiff's City Messenger Air Express inbound and outbound air shipments, with intent to defraud the plaintiff and in breach of its fiduciary duties as agent for the plaintiff, secretly and fraudulently divert City Messenger Air Express shipments to their own use, and did fraudulently appropriate the proceeds of such shipments to their own use, without accounting to the plaintiff for the same. That the amount of such proceeds so wrongfully and unlawfully diverted and appropriated by the said defendants will be more fully ascertained upon an accounting had of said defendants, but is alleged by the plaintiff, on information and belief, to be in excess of the sum of Ten Thousand Dollars ($10,000.00).

14. In addition to the aforesaid wrongful acts, the said defendants, City Bonded Messenger & Trucking Service, Inc., Irving Mansfield and Nadine Mansfield, have since on or about the month of October, 1954, to this date present, engaged and now continue to engage in various unlawful, unfair and deceptive methods of competition to the injury and damage of plaintiff's property rights as are more fully hereinafter set forth:

(a) That said defendants on or about the month of October, 1954, in pursuance of their wrongful scheme to divert and appropriate to their own use the good-

will and business associated with plaintiff's trade name of City Messenger Air Express, did, without the knowledge and consent of the plaintiff, apply for and obtain a telephone listing from the Illinois Bell Telephone Company to-wit as follows:

"City Messenger Air Express RAndolph 6-2391"
193 N. La Salle Street, Chicago, Ill.

That the said defendants are presently maintaining said telephone listing under the name of City Messenger Air Express and receiving telephone calls intended for the plaintiff at the office of the defendant, City Bonded Messenger & Trucking Service, Inc., 193 N. La Salle Street, Chicago, Illinois, have refused to give up the aforesaid telephone listing under the name of City Messenger Air Express, and are fraudulently holding themselves out to air shippers and to the public generally as being City Messenger Air Express, though in fact said defendants are not authorized or registered to do business as an Air Freight Forwarder, and are in violation of the Economic Regulations of the Civic Aeronautic Board. That as a result of said telephone listing aforesaid, the Illinois Bell Telephone Company, on or about the month of January, 1955, after the defendant, City Bonded Messenger & Trucking Service, Inc., had terminated its agency, refused to grant the plaintiff a telephone listing under its authorized and legitimate trade name of City Messenger Air Express, and finally only did so upon the plaintiff exhibiting to said Telephone Company a copy of plaintiff's Letter of Registration N. 163 issued to the plaintiff by the Civil Aeronautics Board. That plaintiff now has a telephone listing for its newly established Chicago office as follows:

"City Messenger Air Express WAbash 2-1850"
845 S. Wabash Avenue, Chicago, Ill.

That as a consequence of the two telephone listings aforesaid under the name of City Messenger Air Express, shippers and callers making telephone calls intended for the plaintiff's Chicago office are being diverted to the office of the defendant, City Bonded Messenger & Trucking Service, Inc., which through

its officers, Irving Mansfield and Nadine Mansfield, is holding itself out as being City Messenger Air Express.

(b) By way of illustrating the operation of such false, deceptive and unfair trade practices upon the part of the defendants, the plaintiff further states the facts to be that on or about the early part of January, 1955, the said defendants picked up in the name of City Messenger Air Express an air express shipment from Modern Talking Pictures, 420 N. Michigan Avenue, Chicago, Illinois, for shipment to the Los Angeles office of said Modern Talking Pictures firm; that said defendants then shipped said shipment via the Air Express division of Railway Express Agency, with Nadine Mansfield, defendant herein, as the named consignor of said shipment, and the Los Angeles office of Modern Talking Pictures, as the named consignee. Thereafter when said shipment failed to arrive at its destination, the said shipper, Modern Talking Pictures, made inquiry of and looked to the plaintiff, City Messenger Air Express, to whom it was under the impression and belief that it had made delivery of the shipment.

(c) The defendant, City Bonded Messenger & Trucking Service, Inc., through its officers and agents, Irving Mansfield and Nadine Mansfield, is and has been, without the consent or approval of the plaintiff, falsely, fraudulently and deceptively advertising and holding itself out as (1) "City Messenger Air Express", (2) as being "the only national messenger service in the U. S. A.", (3) as providing "City Messenger national credit . . . for charging messenger service at a City Messenger office whether in New York, Chicago, Hollywood, Beverly Hills or Los Angeles", (4) to handle "Air Freight", and (5) as having certain listed offices in New York, Hollywood, Los Angeles, and Beverly Hills. Attached hereto and made a part of this Complaint is a photostatic copy of a certain circular, identified as plaintiff's Exhibit "B", being distributed and published by the said defendants, without the consent or approval of the plaintiff, evidencing said unfair, fraudulent and deceptive advertising

and business practices. Plaintiff further states the facts to be that the telephone number listings shown on said circular for New York, Hollywood, Los Angeles and Beverly Hills, deceptively and fraudulently duplicate and simulate exactly the telephone listings maintained by plaintiff's offices in those cities as set forth in Paragraph 10 hereinabove, though in fact said de-
13 fendants do not have or maintain any such offices or telephone listing in said cities.

(d) That in pursuance of their wrongful scheme to discredit the plaintiff and to divert and appropriate to their own use the goodwill and business associated with plaintiff's trade name of City Messenger Air Express, the said defendant, City Bonded Messenger & Trucking Service, Inc., Irving Mansfield and Nadine Mansfield have been and are falsely telling and representing to shippers and various airlines, including in particular the United Air Lines and Eastern Air Lines offices in Chicago, Illinois, that the plaintiff is a poor credit risk, that the plaintiff is out of business, and that the plaintiff has no service in or out of Chicago.

(e) That the plaintiff is duly licensed as a foreign corporation to do business in the State of Illinois, and has filed with the Clerk of the County Court of Cook County, Illinois, an Assumed Name Certificate to the effect that it "is conducting and transacting a business of expediting, forwarding and consolidating air express and general freight at 845 South Wabash Avenue, Chicago, in said County and State under the name of City Messenger Air Express." That said defendant, City Bonded Messenger & Trucking Service, Inc., acting through its officers and agents, Irving Mansfield and Nadine Mansfield, in pursuance of their wrongful scheme to appropriate to their own use the plaintiff's trade name of City Messenger Air Express, and to divert and appropriate to their own use the goodwill and business associated with said trade name, did on January 19, 1955, wrongfully file an Assumed Name Certificate with the Clerk of the County Court of Cook County under the same name of City Messenger Air Express.

15. The plaintiff has acquired substantial and exclusive property rights in the use of the trade name City Messenger Air Exxpress and to its abbreviated form "CMAX", (a) by virtue of the fact that the exclusive use of said trade name by the plaintiff in connection with its operations as an Air Freight Forwarder is and has been expressly authorized and sanctioned by the Civil Aeronautics Board pursuant to the Letter of Registration No. 163 heretofore issued by said Board to the plaintiff in the name of the plaintiff doing business as City Messenger Air Express, plaintiff's Exhibit "A" supra, and the provisions of
14 the Economic Regulations of the Civil Aeronautics Board heretofore cited; (b) by virtue of the fact that said trade name, City Messenger Air Express, is and has been distinctively and uniquely associated with plaintiff's business as an Air Freight Forwarder, even before the said defendants began to wrongfully simulate the use of said trade name, and (c) by virtue of the goodwill attached to the use of said trade name inasmuch as said trade name has become recognized and associated with by shippers and the general public using air freight services, and by the various commercial airlines, as identifying the business and the business locations of the said plaintiff.

16. That the use by the defendant, City Bonded Messenger & Trucking Service, Inc., through its officers and agents Irving Mansfield and Nadine Mansfield, of plaintiff's trade name of City Messenger Air Express, under the facts and circumstances alleged aforesaid, constitutes a wrongful appropriation and an unwarranted and unlawful use by the said defendants, constitutes an unfair and deceptive method of competitive practice, is in direct violation of the regulations of the Civil Aeronautics Board under the Civil Aeronautic Act which, to protect the public interest, regulates the operation of Air Freight Forwarders, and which provides that the name used by an Air Freight Forwarder should not be contrary to the public interest

and should not constitute an unfair or deceptive practice or method of competition in air transportation.

17. That by reason of the wrongful acts of the said defendants, as alleged aforesaid, to discredit and defame the credit and reputation of the plaintiff, and to divert and appropriate to their own use the goodwill and business associated with plaintiff's trade name of City Messenger Air Express, the said plaintiff has suffered and continues to suffer substantial and irreparable injury and damage to plaintiff's business. That unless the said defendants, and each of them, City Bonded Messenger & Trucking Service, Inc., Irving Mansfield and Nadine Mansfield, and their agents, servants, attorneys and employees are immediately and forthwith restrained and enjoined, by a Writ of Injunction granted by this Court, from using, simulating or in any way copying plaintiff's trade name of City Messenger Air Express, and from holding themselves out as being City Messenger Air Express, and from engaging in the various unlawful, unfair and deceptive methods of competition and practices alleged aforesaid, the said plaintiff will suffer irreparable injury and damage to its property rights. That under the aforesaid circumstances the said plaintiff has no adequate remedy at law, and is entitled to equitable relief.

Wherefore, plaintiff asks judgment as follows:

(a) That an accounting be had and taken of the proceeds received by the defendants, and each of them, City Bonded Messenger & Trucking Service, Inc., Irving Mansfield and Nadine Mansfield, in connection with said defendants handling and processing inbound and outbound air shipments received or picked up or solicited by the defendants in the name of City Messenger Air Express, including the proceeds of shipments wrongfully diverted by the said defendants, and that said defendants, and each of them, be decreed to pay to the plaintiff such sum of moneys as may be found to be equitably due said plaintiff.

(b) That said defendants, and each of them, City Bonded Messenger & Trucking Service, Inc., Irving Mansfield, and Nadine Mansfield, be decreed to pay to the plaintiff such money damages as the plaintiff may be entitled to by virtue of the wrongful acts of said defendants in discrediting and defaming the credit and reputation of the plaintiff, and in diverting and appropriating to their own use the goodwill and business associated with plaintiff's trade name of City Messenger Air Express.

(c) That a Temporary Writ of Injunction be forthwith granted by this Court in favor of said plaintiff herein, restraining and enjoining the said defendants, and each of them, City Bonded Messenger & Trucking Service, Inc., Irving Mansfield and Nadine Mansfield, their agents, servants, attorneys and employees, from using, simulating or in any way copying plaintiff's trade name of City Messenger Air Express, including the abbreviation thereof of CMAX, and in holding themselves out as City Messenger Air Express. That upon hearng of this cause, said Writ of Injunction be made permanent.

(d) That a Temporary Writ of Injunction be also forthwith granted by this Court in favor of said plaintiff herein restraining and enjoining the Illinois Bell Telephone Company and The Reuben H. Donnelley Corporation, co-defendants herein, from carrying, holding out to the public or publishing any telephone listing under the name of City Messenger Air Express, other than as such listing may be authorized by the plaintiff, and directing said Illinois Bell Telephone Company and The Reuben H. Donnelley Corporation to discontinue and delete the following present telephone listing under the name of City Messenger Air Express, to-wit as follows:

"City Messenger Air Express RAndolph 6-2391"
193 N. LaSalle Street, Chicago, Ill.

That upon hearing of this cause, said Writ of Injunction be made permanent.

(c) That the plaintiff have such other and further relief as is appropriate in the premises and which this Court may deem meet.

City Messenger of Hollywood, Inc., a California corporation, doing business under the trade name of City Messenger Air Express.
By: Sidney Fullman /s/
Its Duly
Authorized Agent

17 State of California,
County of Los Angeles—ss.

Sidney Fullman, being first duly sworn on his oath, deposes and says that he is the Vice President and duly authorized agent of City Messenger of Hollywood, Inc., a California corporation, doing business under the trade name of City Messenger Air Express, plaintiff herein; that he has read the foregoing Complaint by him subscribed, and has knowledge of the facts stated therein, and that the facts stated therein are true in substance and in fact, except as to those matters which are therein stated to be on information and belief, and that as to such matters he believes them to be true. Said affiant further states that unless the Temporary Writ of Injunction prayed for in said Complaint is forthwith granted by this Court that said plaintiff will suffer irreparable injury.

/s/ Sidney Fullman

Subscribed and sworn to
before me this 14th day
of April, 1955, A. D.

/s/ Margaret V. Brain
Notary Public in and for
said County.

18. PLAINTIFF'S EXHIBIT "A"

Civil Aeronautics Board

Washington 25

Letter of Registration No. 163

Air Freight Forwarder

City Messenger of Hollywood, Inc.
d/b/a City Messenger Air Express
1414 Cole Place
Los Angeles 28, California

is hereby acknowledged to have duly registered with the Civil Aeronautics Board as an Air Freight Forwarder under the provisions of Part 296 of the Economic Regulations, relating to indirect air transportation of property only between places in the continental United States.

This Letter of Registration is not transferable and may be suspended, revoked or terminated in accordance with pertinent provisions of Part 296 of the Economic Regulations.

This is not a certificate of public convenience and necessity and is merely evidence of registration.

Issued: May 21, 1954

Effective: May 22, 1954

(S E A L)

M. C. Mulligan
M. C. Mulligan
Secretary

34

IN THE UNITED STATES DISTRICT COURT

(Civil Action—No. 55 C 575)

ANSWER

[Filed June 28, 1955]

Now come the Defendants, City Bonded Messenger & Trucking Service, Inc., Irving Mansfield and Nadine Mansfield, and in answer to Plaintiff's Complaint, admit, deny and allege as follows:

1. In answer to Paragraph 1, Defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations thereof and, therefore, deny the same and leave Plaintiff to strict proof thereof except that they admit Plaintiff is a California corporation.

2. Defendants admit the allegations of Paragraphs 2 and 3.

35 3. In answer to Paragraph 4, Defendants deny the allegations thereof.

4. In answer to Paragraph 5, Defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations thereof and, therefore, deny the same and leave Plaintiff to strict proof thereof, except that Defendants specifically deny that Plaintiff is qualified or has any right to engage in business as an Air Freight Forwarder in Interstate commerce and/or in the State of Illinois under the trade name of City Messenger Air Express.

5. In answer to Paragraphs 6 and 7, Defendants admit that the stated Parts of the Economic Regulations of the Civil Aeronautics Board read as alleged, but themselves allege that said Parts of said Economic Regulations of the Civil Aeronautics Board are not in any way involved in the subject controversy.

6. Defendants admit the allegations of Paragraph 8.

7. Defendants admit that Part 296.16 of the Economic Regulations of the Civil Aeronautics Board provides in part as alleged, but themselves allege that the said Part has no application to the herein controversy.

8. In answer to Paragraph 10, Defendants allege that they are without knowledge or information sufficient
36 to form a belief as to the truth of the allegations thereof and, therefore, deny the same and leave Plaintiff to strict proof thereof.

9. In answer to Paragraph 11, Defendants deny each and every allegation thereof and specifically deny that they were employed by the Plaintiff as its exclusive agent in the City of Chicago, Illinois, but *themselves aver that they were induced by said Plaintiff to enter into an agreement to purchase a one-half (½) interest in their alleged Air Freight Forwarding business.*

10. In answer to Paragraph 12, the Defendants deny each and every allegation thereof, but admit that on December 29, 1954, the said Irving Mansfield notified the Plaintiff that in view of the refusal of said Plaintiff to reduce to formal written terms the aforementioned contract and the termination of the aforementioned contract by the Plaintiff, the said Defendant, City Bonded Messenger & Trucking Service, Inc., no longer would permit Plaintiff to use its facilities, equipment, offices and services.

11. In answer to Paragraph 13, Defendants deny each and every allegation thereof and specifically deny that the said Defendant firm, alone or in conjunction with its principal officers, Irving Mansfield and Nadine Mansfield, did at any time while acting in any capacity whatsoever, divert City Messenger Air Express shipments to their
37 own use or to any other use, said Defendants further deny that they appropriated any proceeds of any shipments whatsoever to their own use.

12. In answer to Paragraph 14, said Defendants deny each and every allegation thereof and specifically deny that they have at any time engaged in any unlawful, unfair or deceptive methods of competition:

(a) Said Defendants deny that they did, without the knowledge and consent of the Plaintiff, apply for and obtain a telephone listing from the Illinois Bell Telephone Company to-wit as follows:

"City Messenger Air Express RAndolph 6-2391"
193 N. LaSalle Street, Chicago, Ill.

but on the contrary aver that said listing was obtained at the insistence of Plaintiff's Officers, Elliot Fullman and Sidney Fullman. That at the time alleged, said Plaintiff was using the facilities of Defendant, City Bonded Messenger & Trucking Service, Inc., including its offices, desks, telephones, services and the like, deny receiving telephone calls intended for the Plaintiff at the office of the Defendant, City Bonded Messenger & Trucking Service, Inc., 193 North La Salle Street, Chicago, Illinois, deny that any telephone calls from shippers and callers to the defendant, City Bonded Messenger & Trucking Service, Inc., are intended for Plaintiff's Chicago office or are being diverted to the office of the Defendant, City Bonded Messenger & Trucking Service, Inc., and further deny that Defendant, City Bonded Messenger & Trucking Service, Inc., through its Officers, Irving Mansfield and Nadine Mansfield, or through any other employees, officers or agents, is holding itself out as being the Plaintiff.

38 (b) Said Defendants deny each and every allegation of Part (b) of Paragraph 14 and specifically deny that they at any time picked up in the name of City Messenger Air Express, an air express shipment from Modern Talking Pictures, 420 North Michigan Avenue, Chicago, Illinois, for shipment to the Los Angeles office of said Modern Talking Pictures firm; said Defendants further deny that they shipped said shipment via the Air Express division of Railway Express Agency, or that the said Nadine Mansfield was named as consignor of the alleged shipment or of any other

shipment for Modern Talking Pictures; except that said Defendants aver that the said Modern Talking Pictures was a customer of theirs utilizing their surface messenger service for delivery of shipments to and from the airport in Chicago long prior to the date that Plaintiff first engaged in the Air Freight Forwarding business in Chicago, Illinois, and/or in Interstate commerce anywhere in the United States.

(c) Said Defendants deny each and every allegation of Part (c) of Paragraph 14 except they admit that Plaintiff's Exhibit "B" is a photostatic copy of a certain circular which was printed and distributed at the specific request of the Plaintiff, that substantially all of the copy contained in said circular was furnished by the Plaintiff and approved by the Plaintiff including the telephone number listings shown in the circular.

(d) Said Defendants deny each and every allegation of Part (d) of Paragraph 14 and specifically deny that they at any time attempted to discredit the Plaintiff or to divert and appropriate to their own use any goodwill or business which the Plaintiff may have had, or told or represented to shippers of various airlines, including in particular the United Air Lines and Eastern Air Lines offices in Chicago, Illinois, that the Plaintiff was a poor credit risk, that the Plaintiff was out of business, or that the Plaintiff had no service in or
39 out of Chicago. On the contrary said Defendants aver that at least in one instance when the United Air Lines threatened to discontinue affording credit to the Plaintiff, Defendants induced United Air Lines to continue affording credit to Plaintiff by agreeing to guarantee in the name of City Bonded Messenger & Trucking Service, Inc., the Credit of Plaintiff.

(e) In answer to Part (e) of Paragraph 14, said Defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations that Plaintiff is duly licensed as a foreign corporation to do business in the State of Illinois, or has filed with the Clerk of the County

Court of Cook County, Illinois, an Assumed Name Certificate, except that said Defendants aver that paragraph 220 of Chapter 38, Revised Statutes of Illinois, directly prohibits a corporation from transacting any business under any other or different name than that conferred upon it by its Articles of Incorporation; Defendants deny that Defendant, City Bonded Messenger & Trucking Service, Inc., acting through its officers and agents, Irving Mansfield and Nadine Mansfield, did in pursuance of any wrongful scheme to divert and appropriate to their own use any goodwill or business that Plaintiff may have had, wrongfully file an Assumed Name Certificate with the Clerk of the County Court of Cook County.

13. In answer to Paragraph 15, the said Defendants deny each and every allegation thereof and specifically deny that the Plaintiff has acquired any property rights whatsoever in the use of the trade name, City Messenger Air Express, by virtue of any fact whatsoever; Defendants further deny that the Civil Aeronautics Board or any other agency has the right to authorize or sanction the use of the trade name, trade style and/or service mark of City Messenger Air Express to the Plaintiff in derogation of the long-established prior right of Defendant, City Bonded Messenger & Trucking Service, Inc., or any trade name, trade style or service mark dominated by the word "City" for use in connection with Messenger, Special Delivery, Drayage, General Trucking, Hauling or Moving services including specifically Air Freight Forwarding; said Defendants further deny that the Regulations of the Civil Aeronautics Board, cited by Plaintiff in its Complaint, expressly authorizes or sanctions the use of the trade name, City Messenger Air Express, by the Plaintiff for such use as amounts to an unfair or deceptive practice or an unfair method of competition; said Defendants further allege that Economic Regulations Amendment No.

1 to Part 296 of the Civil Aeronautics Board reads in part as follows:

> "The Board possesses the power, pursuant to Section 411 of the Civil Aeronautics Act to require a carrier, after notice and hearing, to cease and desist from the use of a given name in cases where it finds that such use by the carrier concerned amounts to an unfair or deceptive practice or an unfair method of competion."

14. In answer to Paragraph 16, said Defendants deny each and every allegation thereof and aver that Defendant, City Bonded Messenger & Trucking Service, Inc., having adopted and used said name continuously, openly and notoriously since a date long prior to the date that Plaintiff first began to use the name, City Messenger Service of Hollywood, Inc., and/or City Messenger Air Express, has the sole and exclusive right to said trade name and service mark and, therefore, deny that the use of any name dominated by the word "City" by Defendants constitutes a wrongful appropriation or an unwarranted or unlawful use by Defendants, or constitutes an unfair or deceptive method of competitive practice, except that said Defendants admit that the Regulations of the Civil Aeronautics Board provide that the name used by an Air Freight Forwarder should not be contrary to the public interests and should not constitute an unfair or deceptive practice or method of competition in Air Transportation.

41

15. In answer to Paragraph 17, said Defendants deny each and every allegation thereof.

Wherefore Defendants Pray that judgment be rendered against Plaintiff on its complaint and that its complaint be dismissed with costs allowed to Defendants.

COUNTERCLAIM

COUNT I

[Filed June 28, 1955]

As a counterclaim Defendant, City Bonded Messenger & Trucking Service, Inc., praying for the relief hereby sought avers:

1. Defendant, City Bonded Messenger & Trucking
42 Service, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business in the City of Chicago, County of Cook, and State of Illinois.

2. Plaintiff is a corporation organized and existing under the laws of the State of California, with a place of business in the City of Chicago, County of Cook, and State of Illinois.

3. The matter in controversy herein exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars ($3,000.00).

4. For many years and continuously to date, Defendant and its predecessor-in-title have engaged in the business of rendering Messenger Delivery Service including the Special Delivery of various commodities, such as Air Freight, both Intrastate within the State of Illinois and Interstate between the several States of the United States of America.

5. (a) In the year 1942 Defendant's predecessor-in-title selected as its trade and business style, the name City Messenger & Trucking Service, and simultaneously adopted as its service mark, the arbitrary and distinctive words City Bonded with the word City appearing in script and with the words used either alone or in connection with a symbol (Defendant's letterhead showing the service mark incorporated into its corporate name is attached hereto

43 and made a part hereof as Defendant's Exhibit "5"), which service mark Defendant since 1942 has used continuously, openly and notoriously in connection with the sale or advertising of its said services and the rendering of said services in the State of Illinois and in Interstate commerce between the several States.

(b) Defendant has expended large sums of money in extensively advertising and otherwise promoting the sale of its aforesaid services under its above-stated service mark over a wide territory of the United States and particularly in the Chicago area.

(c) Prior to the acts of Plaintiff hereinafter complained of, the sale and advertising of the aforesaid services throughout the said territory has been so extensive that the service mark City Bonded became distinctive of Defendant's services in commerce and became well known to the public throughout a wide territory particularly in the Chicago area, as a commercial signature of Defendant and also as indicating that any service designated by such mark was reliable, fast, courteous and in all other ways desirable.

(d) By reason of the premises, continuously since the year 1942 Defendant has been and still is the exclusive owner of the aforementioned trade name, trade style and service mark as applied to the aforementioned services.

44 Said exclusive ownership has been generally recognized by the purchasing public and by those rendering the same or similar services.

(e) Said service mark has been approved for registration by the United States Patent Office and the certificate of registration is about to be printed by the United States Government Printing Office (Defendant begs leave of the Court to introduce said certificate of registration into the Pleadings as soon as certificate has been printed and becomes available).

6. Plaintiff, well knowing the premises, and with intent to infringe upon the rights of Defendant and unfairly compete with it, has been and still is:

(a) Unfairly competing with Defendant and infringing upon Defendant's rights with respect to said trade name, trade style and service mark in divers ways, and particularly by using a corporate name, trade name and trade style dominated by the word City, namely "City Messenger of Hollywood, Inc.", "City Messenger Air Express" and "City Bonded Messenger" (attached hereto and made a part of this complaint is a circular identified as Defendants Exhibit "6" distributed and published by said Plaintiff without the consent or approval of the Defendant, in which appears in several instances, service marks which are substantially identical to Defendant's service mark).

(b) Infringing upon Defendant's common law rights by using in Interstate commerce and particularly within the Chicago area, without the consent of Defendant, a service mark dominated by the word City in connection with the sale, offering for sale, or advertising of Messenger Delivery Service and Air Freight Forwarding services, which services are not rendered by said Defendant, and by further using the said service mark without the consent of Defendant on Plaintiff's business cards, advertising materials, stationery, signs and similar media used in the sale and advertising of the services.

7. Upon information and belief, Defendant avers that the similarity of Defendant's trade name, trade style and service mark with the trade names, trade styles and service marks used by Plaintiff are such as to lead to inevitable confusion and uncertainty in the minds of the public as to

the parties who are responsible for the conduct of Plaintiff's business, and as to the source of the services rendered by Plaintiff; and to permit the Plaintiff to continue
46 to use any trade name, style or service mark dominated by the word City would necessarily sanction a deception of the public with the result that the Defendant would be unfairly and unlawfully deprived of the valuable goodwill now attached to the use of its trade name, trade style and service marks and would result in irreparable injury and damage to Defendant.

8. Defendant avers that it possesses a very valuable credit and financial standing and reputation for integrity and fair dealing in trade circles and in the public minds, which is now and will continue to be impaired and damaged by the Plaintiff's use of any name, style or mark dominated by the word City.

9. Defendant avers upon information and belief that the Plaintiff has profited and will continue to profit by its unfair and unlawful use of the name, style and mark City Messenger in connection with its business, by reason of the assumption and belief on the part of the public that the Defendant is in some way or manner identified with the business of the Plaintiff.

10. Defendant avers, upon information and belief, that Plaintiff, in adopting the word City as part of its corporate name, did so with full knowledge of Defendant's use of the word as the dominating part of its trade name, trade style and service mark and with full knowledge
47 of the extent and manner of Defendant's business as set forth above; and that its use of such word as a part of its corporate name, trade style and service mark and in connection with the conduct of its business, was and is with the unfair and unlawful intent and purpose of creating in the minds of persons dealing with Plaintiff

the impression and belief that Plaintiff is in some way connected with or constitutes a part of Defendant's business, and was intended for the purpose of profiting by the good standing and reputation which Defendant and its services have long enjoyed.

11. Defendant avers that the use by Plaintiff of the word City as part of its corporate name and in the conduct of its business, has heretofore resulted in serious injury and damage to Plaintiff of an irreparable nature.

Wherefore, Defendant prays:

(a) A preliminary and also a perpetual injunction restraining Plaintiff, its agents, servants, employees, and attorneys and all acting under and through them, and each of them, from directly or indirectly:

I. Using the word City, or any other simulation of the word in connection with the business conducted by it.

II. Doing anything having the effect of representing that Plaintiff's services emanate from Defendant.

48 (b) The surrender for destruction of all matter bearing a name, style or mark including the word City in Plaintiff's possession.

(c) An accounting of profits and damages.

(d) An award of costs against Plaintiff.

(e) Such other relief as may be justified.

62 AMENDMENT TO DEFENDANT'S COUNTERCLAIM.

COUNT III

[Filed August 12, 1955]

Now comes Defendant, City Bonded Messenger & Trucking Service, Inc., and in amendment to its Counterclaim praying for the relief hereby sought, avers:

1. Defendant re-alleges Paragraphs 1, 2 and 3 of Count I of the Counterclaim.

2. As an additional ground for jurisdiction of this Court, Defendant alleges that it is based upon infringement of its service mark used in commerce among the
63 several States of the United States and upon infringement of said service mark duly registered in the United States Patent Office in accordance with the Trade Mark Act of July 5, 1946.

3. Defendant re-alleges Paragraph 4 of Count I of the Counterclaim.

4. Defendant re-alleges sub-paragraphs (a), (b), (c) and (d) of Paragraph 5 of Count I of the Counterclaim.

(e) Said service mark "City Bonded" has been duly registered in the United States Patent Office for Messenger Delivery Service; Special Delivery of Various Commodities—namely, News Releases, Advertising Copy, Air Line and Railroad Tickets, Radio Transcriptions, Graphic Art Industries, Samples, Air Freight, Displays and Blow-ups; Drayage and General Trucking, Hauling and Moving, under the Trade Mark Act of 1946, Registration No. 609,732, dated July 26, 1955. Said Registration No. 609,732 is now in full force and effect, and said registration of the service mark shown therein and the goodwill and the business appurtenant thereto are the property of Defendant.

5. Plaintiff, well knowing the premises and with intent to infringe upon the rights of Defendant, has been and still is infringing upon United States Patent Office Service Mark Registration No. 609,732 by;

64 (a) Using in Interstate commerce without the consent of Defendant, a service mark dominated by the word "City" in connection with the sale, offering for sale, or advertising of Messenger Delivery Service, including the Special Delivery of Air Freight, not the services of Defendant.

(b) Applying the aforementioned service mark to signs, letterheads, brochures and advertisements intended to be used in connection with the sale or advertising of Messenger Delivery Service including the Special Delivery of Air Freight in Interstate commerce.

6. Upon information and belief, Plaintiff's predecessor-in-title, a firm consisting of members who are now the officers and principal stockholders of Plaintiff, was formed during the year 1947 with Plaintiff corporation being formed during the year 1951, and Plaintiff and its predecessor-in-title then knew of Defendant, its service mark and the high quality and popularity of its services; that thereafter Plaintiff with intent to appropriate to their own use and benefit the large good will of Defendant and its predecessors, pertaining to said mark, adopted Defendant's said service mark in substantially its identical form, including the identical script type of printing and the symbols comprising a running messenger and a speeding automobile, in connection with the sale and advertising in Interstate commerce of services which are identical with Defendant's services.

65 7. That the services which the Plaintiff renders under the infringing service mark is of an inferior quality than the services which the Defendant and its predecessors-in-title have rendered under said service mark; that the aforesaid acts of Plaintiff were without the consent of the Defendant and constitute infringement of the Defendant's service mark.

8. That Plaintiff very recently has opened a place of business in the City of Chicago under the name "City Messenger Air Express", and engaged in the service of Special Delivery of Air Freight using in connection with the sale and advertising of said services, a service mark substantially identical to Defendant's service mark; that the aforesaid acts of Plaintiff were without the consent of Defendant and constitute infringement of Defendant's

service mark; that Plaintiff in effect has adopted in its business the word "City" in the identical style of lettering as registered to Defendant; and that said acts constitute infringement of the exclusive right of the Defendant to use its said service mark which has been duly registered in the United States Patent Office under the Trade Mark Act of July 5, 1946.

9. That notwithstanding repeated formal protests sent by Defendant's attorneys to Plaintiff by registered mail (a copy of the latest such letter is affixed hereto as Defendant's Exhibit "7"), Plaintiff has persisted in its
66 unlawful and infringing use of said trade name and service mark, and refuses to discontinue the unlawful use.

10. Defendant avers that it possesses a very valuable credit and financial standing and reputation for integrity and fair dealing in trade circles and in the public mind, which is now and will continue to be impaired and damaged by the Plaintiff's use of any trade name or service mark dominated by the word "City".

11. Defendant avers upon information and belief that Plaintiff has profited and will continue to profit by its unfair and unlawful use of the trade names "City Messenger of Hollywood" and "City Messenger Air Express", or the service marks "City Messenger" in connection with its business, by reason of the assumption and belief on the part of the public that the Defendant is in some way or manner identified with the business of the Plaintiff.

Wherefore, Defendant prays:

(a) A preliminary and also a perpetual injunction restraining Plaintiff, its agents, servants, employees, and attorneys and all acting under and through them, and each of them, from directly or indirectly:

67 I. Using the word "City", or any other simulation of the word in connection with the business conducted by it.

II. Doing anything having the effect of representing that Plaintiff's services emanate from Defendant.

(b) The surrender for destruction of all matter bearing a name, style or mark including the word "City" in Plaintiff's possession.

(c) An accounting of profits and damages.

(d) An award of costs against Plaintiff.

(e) Such other relief as may be justified.

City Bonded Messenger & Trucking Service, Inc., Irving Mansfield and Nadine Mansfield
By Silverman & Mullin
105 West Adams Street
Chicago 3, Illinois

August 11, 1955

68 DEFENDANT'S EXHIBIT "7".

(Letterhead of)

SILVERMAN & MULLIN

July 28, 1955

Certified Mail—

Return Receipt Requested

City Messenger of Hollywood, Inc.
and City Messenger of Hollywood, Inc.
d b a City Messenger Air Express
845 South Wabash Avenue,
Chicago, Illinois

Gentlemen:

Supplemental to the notice of infringement and request to cease and desist from the unfair competitive practices resulting from your unauthorized use of a trade name and

service mark dominated by the word City which was sent to you last fall on behalf of my client, City Bonded Messenger & Trucking Service, Inc., of Chicago, Illinois, I have been instructed to advise you as follows:

1. My client's service mark has now been registered by the U. S. Patent Office for Messenger Delivery Service including delivery of Air Freight. Certificate of Registration No. 609,732 has been issued therefor to my client.
2. Your continued use of a trade name and service mark dominated by the word City comprises an infringement of my client's service mark in accordance with the United States Statute.

You are, therefore, requested to immediately cease and desist from any further infringements of the aforementioned service mark. You are further requested to furnish me with an accounting of each and every transaction which you have engaged in in which a trade name and/or service mark was used containing the dominant word City and/or a symbol comprising a speeding car or truck and a running messenger.

Failure to comply immediately with the aforementioned request will force my client to take immediate legal action to enjoin the aforementioned infringements.

Yours very truly,

/s/ Eli Mullin

EM:jb

ccs: Blanksten & Lansing
City Bonded Messenger &
Trucking Service, Inc.

70

IN THE UNITED STATES DISTRICT COURT

(Civil Action—No. 55 C 575)

ANSWER TO COUNTS I AND III OF DEFENDANT'S COUNTERCLAIM

[Filed September 1, 1955]

Now comes the plaintiff, City Messenger of Hollywood, Inc., a California corporation doing business under the trade name of City Messenger Air Express, by Blankensten and Lansing, its attorneys, and in answer to Counts I and III of the Counterclaim of the defendant, City Bonded Messenger & Trucking Service, Inc., states as follows:

1. Plaintiff admits the allegations of Paragraphs 1, 2 and 3 of Count I of said defendant's Counterclaim, but further states the fact to be in answer to Paragraph 2 of said Count I that the plaintiff is licensed to do business as a foreign corporation in the State of Illinois.

2. In answer to Paragraph 4 of Count I of said defendant's Counterclaim, the plaintiff admits that the said defendant has engaged in the business of rendering mes-
71 senger delivery service, except that said plaintiff has no knowledge sufficient to form a belief as to the number of years that the said defendant and its alleged predecessor-in-title have been engaged in said business, and, therefore, denies the same and demands strict proof thereof by said defendant.

3. In answer to Paragraph 5 (a), (b), (c) and (d) of Count I of said defendant's Counterclaim, the plaintiff denies each and every allegation contained therein, and more specifically denies that the said defendant is the owner of or has any property rights in the trade name and style denoted as "City Messenger & Trucking Service", or in the service mark denoted as "City Bonded".

4. In answer to Paragraph 5 (e) of Count I of said defendant's Counterclaim, plaintiff admits that the said defendant did on July 26, 1955, purportedly register said service mark denoted as "City Bonded" with the United States Patent Office.

5. The plaintiff denies each and every allegation contained in Paragraphs 6, (including sub-paragraphs 6 (a) and 6 (b)), 7, 8, 9, 10 and 11 of Count I of said defendant's Counterclaim.

6. Plaintiff admits the allegations of Paragraph 1 of Count III of said defendant's Counterclaim, but further states the facts to be that the plaintiff is licensed to do business as a foreign corporation in the State of Illinois.

7. Plaintiff denies the allegations of Paragraph 2 of Count III of said defendant's Counterclaim.

8. In answer to Paragraph 3 of Count III of said defendant's Counterclaim, the plaintiff admits that the said defendant has engaged in the business of rendering messenger delivery service, except that said plaintiff has no knowledge sufficient to form belief as to the number of years that the said defendant and its alleged predecessor-in-title have been engaged in said business, and, therefore, denies the same and demands strict proof thereof by said defendant.

9. In answer to Paragraph 4 of Count III of said defendant's Counterclaim (which re-alleges sub-paragraphs (a), (b), (c) and (d) of Paragraph 5 of Count I of the Counterclaim), the plaintiff denies each and every allegation contained therein.

10. In answer to sub-paragraph (e) of Paragraph 4 of Count III of said defendant's Counterclaim, the plaintiff admits that the alleged service mark "City Bonded" has been registered in the United States Patent Office but denies that the said defendant has any property right in the same.

11. In answer to Pararaph 5, and sub-paragraphs (a) and (b) thereof, of Count III of said defendant's Counterclaim, the plaintiff denies each and every allegation contained therein, and specifically denies that it is infringing upon said defendant's alleged service mark.

12. In answer to Paragraph 6 of Count III of said defendant's Counterclaim, the plaintiff denies each and every allegation contained therein, and specifically denies that it appropriated to its own use any service mark belonging to the said defendant.

13. The plaintiff denies each and every allegation contained in Paragraph 7 of Count III of said defendant's Counterclaim.

72a 14. In answer to Paragraph 8 of Count III of said defendant's Counterclaim, the plaintiff admits that it is operating a place of business in the City of Chicago under the name "City Messenger Air Express", and that it is engaged in the service and business of an Air Freight Forwarder pursuant to authority granted it by the Civil Aeronautics Board, as set forth in plaintiff's Complaint. Said plaintiff denies, however, that plaintiff's use of its legally constituted name, and its manner of use thereof, in any way constitutes an infringement of any alleged property right of said defendant in said defendant's alleged service mark. The plaintiff further specifically denies that said defendant has any exclusive property right in the use of said defendant's alleged service mark, and alleges and states the fact to be that said plaintiff's predecessor-in-title was actively using in trade and commerce the trade name and trade style of "City Bonded Messenger & Express", and a service mark containing the words "City Bonded" accompanied by a picture of a delivery truck and a messenger, for a number of years prior to said defendant's first alleged use in September, 1942. The

plaintiff further states and alleges the facts to be that the said defendant did not begin to use the service mark consisting of the running messenger, delivery truck and the words "City Bonded" until on or about the year 1950, and that said defendant's use of said trade name and service mark was and is in violation of plaintiff's common law property rights in said trade name and service mark.

15. In answer to Paragraph 9 of Count III of said defendant's Counterclaim, the plaintiff denies that it is unlawfully using the said trade name and service mark.

73 16. Plaintiff denies each and every allegation contained in Paragraph 10 of Count III of said defendant's Counterclaim.

17. In answer to Paragraph 11 of Count III of said defendant's Counterclaim, the plaintiff denies that it is engaged in any unlawful use of the trade names "City Messenger of Hollywood" and "City Messenger Air Express" or the service marks "City Messenger" in connection with plaintiff's business.

Wherefore, plaintiff prays that judgment be rendered against said defendant, City Bonded Messenger & Trucking Service, Inc., on Counts I and III of defendant's Counterclaim, and that its said Counterclaim be dismissed with costs allowed to said plaintiff.

City Messenger of Hollywood, Inc.,
a California corporation, doing
business under the trade name of
City Messenger Air Express

By Blanksten & Lansing
33 North LaSalle St.
Chicago 2, Illinois
STate 2-7828

75

IN THE UNITED STATES DISTRICT COURT

(Civil Action—No. 55 C 575)

DEFENDANTS' AMENDED COUNT II OF COUNTERCLAIM

[Filed September 27, 1955]

Defendants, City Bonded Messenger & Trucking Service, Inc., Irving Mansfield and Nadine Mansfield, for their second claim against Plaintiff aver:

1. Defendant, City Bonded Messenger & Trucking Service, Inc., is an Illinois corporation. The Defendants, Irving Mansfield and Nadine Mansfield, are both citizens of the State of Illinois, residing in the City of Chicago, County of Cook, and State of Illinois.

2. Said Defendants re-allege Paragraphs 2 and 3 of Count I of the Counterclaim and specifically allege
76 that the matter in controversy exceeds the sum of Three Thousand Dollars ($3,000.00), exclusive of interest and costs.

3. During the latter part of 1953 and on several occasions during 1954 in Chicago, Illinois, during April, 1954, in New York and during October, 1954, in Los Angeles, California, Plaintiff, City Messenger of Hollywood, Inc., through its officers, Benjamin Fullman, Sidney Fullman and Elliot Fullman, falsely and fraudulently represented to the Defendants that said Defendant would join with it in the ownership and operation of an Air Freight Forwarding business to be known as City Messenger Air Express with Defendants to take charge of the operations of said business in Chicago, Illinois. Thereafter said Plaintiff through its said officers continued to falsely and fraudulently represent that said Air Freight Forwarding business had in fact been organized under said name, City

Messenger Air Express, with Defendants as part owners thereof, and said Plaintiff's officers proceeded to act accordingly as though said Air Freight Forwarding business did exist and as though Defendants were in fact part owners thereof, demanding that Defendant fulfill its duties and perform its alleged "part of the bargain".

4. Plaintiff represented that as a modus operandi for achieving the joint ownership and operation of the aforementioned Air Freight Forwarding business, Plaintiff, together with Defendants, would organize a new corporation to be known as City Messenger Air Express, which corporation would conduct the Air Freight Forwarding business and the stock of which corporation would be owned equally by Plaintiff and or its officers and Defendants. Thereafter Plaintiff through its officers falsely and fraudulently represented to Defendant that it had applied in the name of the new corporation, City Messenger Air Express, to the Civil Aeronautics Board for permission to conduct said Air Freight Forwarding business. Notwithstanding said representations, Plaintiff applied for permission to conduct said Air Freight Forwarding business to the Civil Aeronautics Board in the name of Plaintiff only, namely City Messenger of Hollywood, Inc., doing business as City Messenger Air Express. Thereafter on May 18, 1954, in a telegram (see Defendants' Exhibit "7" herewith attached and made a part of this Counterclaim), Plaintiff falsely and fraudulently represented to Defendant Irving Mansfield that said CAB registration had been approved and issued to said new corporation, City Messenger Air Express, when in fact said CAB registration approval had been issued to Plaintiff only, namely City Messenger of Hollywood, Inc., doing business as City Messenger Air Express, as evidenced by Plaintiff's own Exhibit "A" (see Plaintiff's Complaint).

5. Believing the representations to be true and relying on the same, Defendant expended large sums of money, in excess of Three Thousand Dollars ($3,000.00), in extending credit to Plaintiff, in guaranteeing the credit of
78 Plaintiff to United Air Lines, Inc., Capital Airlines, Inc. and others, in purchasing at the request of Plaintiff large numbers of printed forms of the type necessary for use in the Air Freight Forwarding business, large numbers of advertising circulars and materials, in purchasing office supplies, furnishing telephone service, office space, trade terminal space, equipment, personnel and similar supplies, equipment and services for the benefit of the Plaintiff, circularizing its customers advising them of the services to be rendered by the new business, affording the use of Defendant; City Bonded Messenger & Trucking Service, Inc.'s, charge accounts such as Railway Express account, Western Union and the like, for the benefit of Plaintiff, and refusing to furnish services in return for substantial remuneration to competitive Air Freight Forwarders.

6. These representations were false and were known by the Plaintiff to be false at the time they were made and were made with the intent to induce the Defendant to act thereon and with intent to deceive and defraud Defendant, Plaintiff never intending to permit Defendant to join in the ownership and operation of the aforementioned Air Freight Forwarding business.

7. The profits from Messenger Delivery Services, which were it not for the fraud and deceit of Plaintiff, Defendants would have obtained by rendering Air Freight Mes-
79 senger Service to competitive Air Freight Forwarders and services and monies expended by Defendant on behalf of Plaintiff, total in amount Ten Thousand Dollars ($10,000.00) to Defendant's damage.

Wherefore, Defendant prays judgment for Ten Thousand Dollars ($10,000.00) together with the cost of this action and for such other and further relief as to this Court may seem just and proper.

City Bonded Messenger & Trucking Service, Inc., Irving Mansfield and Nadine Mansfield
Silverman & Mullin
By Eli Mullin
105 West Adams Street
Chicago 3, Illinois

80 DEFENDANTS' EXHIBIT "7"

WESTERN UNION

W. P. Marshall, President

CTB003 DEA672 NOA726 LH581

1954 May 18 AM 1 12

LLLU470 NL PD PD WUX TDL Hollywood Calif 17=

Irving Mansfield, City Bonded Messenger, 193 North La-Salle Chgo=

C.A.B. registration approved and issued to City Messenger Air Express effective May 22 1954. Imperative rush be put on printing of way bills. Contact CARCO. Hold them to promise of putting rush on this order. Copy of new tarrif will be mailed you in few days=

City Messenger Service Ben Fullman=

82

IN THE UNITED STATES DISTRICT COURT

(Civil Action—No. 55 C 575)

ANSWER TO AMENDED COUNT II OF DEFENDANTS' COUNTERCLAIM

[Filed October 11, 1955]

Now comes the plaintiff, City Messenger of Hollywood, Inc., a California corporation doing business under the trade name of City Messenger Air Express, by Blaukstein and Lansing, its attorneys, and in answer to Amended Count II of defendants' Counterclaim states as follows:

1. Plaintiff admits the allegations of paragraphs 1 and 2 of Amended Count II of defendants' Counterclaim.

2. Plaintiff denies each and every allegation of paragraph 3 of Amended Count II of defendants' Counterclaim, and states the facts to be that no contractual agreement was ever effectuated or ever entered into between the plaintiff and the said defendants relative to the said defendants joining with the plaintiff in the ownership and operation of an air freight forwarding business.

3. In answer to paragraph 4 of Amended Count II of said defendants' Counterclaim, the plaintiff admits sending the telegram identified as defendants' Exhibit 83 "7", but otherwise denies each and every allegation of said paragraph. The plaintiff states the facts to be that no contractual agreement was ever effectuated or ever entered into between the plaintiff and the said defendants relative to the said defendant joining with the plaintiff in the ownership and operation of an air freight forwarding business.

4. Plaintiff denies each and every allegation of Paragraphs 5, 6 and 7 of Amended Count II of defendants' Counterclaim, and denies that said Amended Count II of

defendants' Counterclaim states a claim or cause of action upon which relief can be granted.

Wherefore, Plaintiff prays that judgment be rendered against said defendants on Amended Count II of defendants' Counterclaim, and that said Counterclaim be dismissed with costs allowed to said plaintiff.

City Mesenger of Hollywood, Inc.,
a California corporation, doing business under the trade name of City Messenger Air Express
By Blanksten and Lansing
33 North La Salle St.,
Chicago 2, Illinois
STate 2-7828

95 This being the day to which this cause was continued for further trial again come the parties by their counsel and the trial proceeds and at the close of plaintiff's case defendants by their counsel enter their motion for a finding in their favor and upon due consideration the court being fully advised it is

Ordered that said motion be and the same hereby is denied and the defendants Nadine Mansfield and Irving Mansfield and Irving Mansfield as defendants be and the same hereby is granted and that this cause be and it hereby is dismissed as to defendants and the hour of adjournment having arrived it is

Further Ordered that said motion to dismiss Nadine Mansfield as defendants be and the same hereby is granted and that this cause be and it hereby is dismissed as to defendants and the hour of adjournment having arrived it is

Ordered that this cause be and the same hereby is adjourned to February 25, 1957 at 11:00 a.m. for further trial.

96

IN THE UNITED STATES DISTRICT COURT

(Civil Action—No. 55 C 575)

AMENDMENT TO DEFENDANTS' COUNTER CLAIM

Count IV

[Filed February 28, 1955]

Now come Defendants City Bonded Messenger Service, Inc., and City Bonded Trucking Company, Inc., and in amendment to their counter claims and pursuant to the order of this Honorable Court, made during the trial of the issues on February 27, 1957, granting leave to said Defendants to amend their counter claim to conform
97 with the proofs and praying for the relief hereby sought, avers:

1. Defendants City Bonded Messenger Service, Inc., and City Bonded Trucking Company, Inc., are corporations organized and existing under and by virtue of the laws of the State of Illinois, with their principal place of business in the city of Chicago, County of Cook, State of Illinois.

2. Defendants re-allege paragraphs 2 and 3 of Count I of the counter claim.

3. That on or about September 7, 1954, at Los Angeles, Los Angeles County, California Defendants offered to purchase for $12,500.00 an undivided one-half interest in all of the assets owned by and in the name of the Plaintiff City Messenger of Hollywood, Inc., doing business as City Messenger Air Express, including the good will of the business attaching thereto and the right to engage in the business as an air freight forwarder under Civil Aeronautics Board letter of registration No. 163.

98 4. That Plaintiff then and there accepted said offer.

5. That defendants have done and performed all

things by them to be performed under the terms of said contract.

6. That Plaintiff, though often there unto requested, has failed and refused to perform the terms of said contract on its part to be performed, in that it has refused to deliver to Defendants said one-half interest in all of the assets owned by and in the name of the Plaintiff City Messenger of Hollywood, Inc., doing business as City Messenger Air Express, including the good will of the business attaching thereto and the right to engage in the business as an air freight forwarder under Civil Aeronautics Board letter of registration No. 163.

7. That by reason of Plaintiff's said failure and refusal to perform said contract, Defendants have sustained great damage in that they were denied profits from messenger delivery services which were it not for said contract, Defendants would have obtained, by rendering air freight messenger service to competitive air freight forwarders, including Emery Air Freight Forwarders, and in that they have received no compensation for services and monies expended by Defendants on behalf of Plaintiff, by reason of Defendants' performance of the terms of said contract; all to Defendants' damage in the sum of $16,526.83.

99

Wherefore Defendants pray judgment for $20,000.00 together with the cost of this action, Attorney's fees and for such other and further relief as to this Court may seem just and proper.

City Bonded Messenger Service, Inc.
City Bonded Trucking Company, Inc.
By Silverman & Mullin

Attorneys for Defendants
105 West Adams Street
Chicago 3, Illinois

Proceedings had before the Honorable John P. Barnes on February 15, 1957. There appeared Normand A. Cohen, attorney for the plaintiff, Kenneth F. Burgess, James E. S. Baker, and H. Blair White, attorneys for Illinois Bell Telephone Company and the Reuben H. Donnelley Corporation, and I. Irving Silverman and Eli Mullin, attorneys for City Bonded Messenger and Trucking Service, Irving Mansfield and Nadine Mansfield.

[February 18, 1957]

IRVING MANSFIELD, called by the plaintiff as an adverse witness, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Cohen.

My name is Irving Mansfield. I am 50 years old. I reside at 5210 Blackstone, Chicago, Illinois. I am president of the City Bonded Messenger and Trucking Service. I have no other business affiliations in the field of messenger and trucking service. I own stock in City Bonded Messenger and Trucking Service, Inc. City Bonded Trucking Company is a separate corporation. I am also president of that company and I own stock in that company. City Bonded Messenger & Trucking Service, Incorporated, and City Bonded Trucking Company are operated at 193 North La Salle Street and 216 West Hill Street. Both companies are operating at the Prudential Building.

I first went into the messenger service and trucking business around 1942 or 1943. Prior to that time I was employed by another messenger service and I was also a stockholder in another messenger service company. Prior to 1942 or 1943, I was employed by Cannonball for 5 years and previously I was a stockholder of Cannonball.

I entered the messenger service and trucking industry
24 in the middle '30's. Prior to that, I had no association with that industry.

25 In 1942 I was the sole owner of the business. I operated under the name of City Bonded Messenger Service. I filed a certificate with the Clerk of Cook County under the assumed name.

26 In 1944 we used the word "City" in script. Ever
27 since the inception of my business I have used some form of messenger boy in connection with my business.

29 In 1948 we first used the mark of the boy running through the "C" in the word "City" and underneath that is "Bonded". Thereafter, I used the boy running through the letter "C" in "City", with others. Before that I used a messenger boy running through the word "City" or thereabouts, with a motorcycle or bicycle.

30 I don't recall which now. I used the messenger boy alone, I would say on and off since 1943. I used different marks from the time I started in business until now, on and off. Since 1948 I used the mark of the boy running through the "C" in the word "City" and underneath that "Bonded".

In 1945 I might have had a social meeting with Ben
31 Fullman. In August, 1951, I might have received a letter from Ben Fullman. I couldn't place the date. I received hundreds of letters, and vice-versa, I sent him hundreds of letters. As to when this correspondence took place, is hard to say. We have been friends of long
33 standing, for thirty years, and I couldn't give you definite dates. After Mr. Fullman left Chicago, which was in 1937, I don't think we had any contact. In fact, I am sure we had no contact until the war years of probably '43 and '44.

I recall having a meeting with Mr. Roper of Mercury Messenger Service of New York and Mr. Ben Fullman in Chicago, in 1951. The exact date I could not give you. As a result of that meeting and possibly others Mr. Roper of Mercury Service, Mr. Fullman and I entered into a verbal agreement to associate ourselves with the Diners' Club for the rendition of messenger service in three cities, New York, Chicago and Los Angeles. As a result of all that,
34 all three concerns were listed in the Diners' Club credit book, and I think from the inception of our going into this business with Diners', they published one of the first magazines or periodicals, and I think we were there. I had conversations with Benjamin Fullman, Sidney Fullman and Elliot Fullman relative to the City Messenger Air Service or City Messenger Air Express. I think we had conversations or rather we had correspondence prior to 1953. We met in the early part of 1953. It possibly could have
35 been the latter part. I believe I had a meeting or a conversation with one of the Fullmans in March of 1954. Again in the month of April 1954, I had a conversation with one of the Fullmans. I had conversations with one or more of the Fullmans in May, June, July and August of 1954. They were in my office constantly. They had office space there at that time. I possibly had a conversation with Ben Fullman during the month of October, 1954. I can't recall. I had a conversation with Ben Fullman in his office in Los Angeles. I think it was in September 1954, or an earlier date.

36 I have seen a document like plaintiff's Exhibit 1
37 That is a City Messenger Air Express air bill. I was responsible for having these printed up. I had them printed up for Mr. Fullman prior to March, 1954. I would say he ordered it and I was responsible for having them printed up. Mr. Fullman sent me the proofs to have
38 these printed up in Chicago. It was possibly the latter

part of 1953. Some of these air bills were delivered to my office at 193 North LaSalle from the PARCO Company. I would say about 5,000 air bills. The telephone number of Randolph 6-6391 was ordered by either Elliot Fullman or Ben Fullman. I ordered it directly. I
39 received a request from Elliot or Ben Fullman and in turn I made the request with the telephone company. They gave service on that number. This telephone was situated at our office at 193 North LaSalle Street.

On January 19, 1955, I recall receiving a phone call from an officer or person in charge of the Illinois Bell Telephone Company, who asked me if I would agree to give up that number. I said no I would not give up that number because that number was identified with the City Bond Messenger & Trucking Service and we were receiving our own calls as well as calls for City Air Service or City
40 Air Express over that phone number.

Q. Now, directing your attention to a lawsuit that was pending in the Municipal Court of Chicago, No. 55 M 2286, do you know who the parties to that lawsuit were?

* * *

By Mr. Mullin: Your Honor, I believe that case has been settled, and the facts that were brought out in that case have nothing to do with the facts in this case. This is a separate lawsuit.

* * *

41 By Mr. Cohen: Yes, it has been settled.

* * *

42 By the Court: Well, I don't want to try any other lawsuit if it is unnecessary. Does anybody plead *res judicata* or anything of that kind?

* * *

By Mr. Cohen: All right. I will withdraw that question.

42 Witness continues: City Bonded Messenger & Truck-
ing Service rendered services to City Messenger Air
Express during the months of June, July, August, Septem-
ber, October, and part of January 1954 and 1955. And
43 I think also in May of 1954. These services consisted
of local delivery service to and from the airport within
a radius of 50 miles of Chicago. We broke bulk, repack-
aged and shipped out. The first couple of months we ren-
dered bills for these services to the plaintiff corporation,
but I had a conversation with Mr. Fullman and inasmuch
as we were entering into an agreement to go into business
together, he said "You know I haven't any money to pay
any of these bills, and inasmuch as we are going into busi-
ness I would suggest that you hold them to a later date
44 until we go into business together."

Plaintiff's Exhibit 1 received in evidence.

46 *Cross Examination by Mr. Mullin.*

On January 19, 1955, I received a telephone call from
an officer of the telephone company asking me as to whether
I would object to discontinue that number and I replied
that I needed that telephone listing because I was receiving
calls for the messenger and trucking phase of that business
on that number. We have a very busy office. We have a
switchboard with about 10 lines coming in and that is over-
crowded.

We tried to educate our customers to call us on some of
these air shipments on this particular number, but inas-
much as they knew the number was the same as the City
Bonded Messenger Service, they didn't stop but would
47 call 6004 or RAndolph 6291. They would just call both
numbers.

48 About 1953, Mr. Fullman approached me by tele-
phone and said that they had a good idea to apply for
a C.A.B. permit to operate air freight forwarding. He

asked me if I was interested and I said very much so. He said, "You know we have the ground work, I have an office in Los Angeles and you have an office, and we are contemplating opening an office in New York." That was in the early part of '53. I also received many letters re-
49 garding this proposition at a later date. Mr. Ben Fullman asked me to come to New York and advised me that they had now opened their New York office. He wanted me to pay him a visit and see what the operation was. I flew to New York and spent about a week
50 there with Mr. Fullman. I don't think Ben was there at the time. I think Elliot and Norvin Fullman were there at the time in New York. They explained the
51 operation to me in New York. When I got back to Chicago, a few days later I contacted Mr. Ben Fullman who was at the Los Angeles office and told him I had been to New York and had seen his operation, and I thought they had a nucleus of something real good and I was very much interested. Thereafter, there was an exchange of correspondence and many telephone calls back and forth. Mr. Ben Fullman invited me to come to Los Angeles to see the operation out there. That was in the early part of August. At that time I couldn't get away, but I arranged to fly out to California in the early part of September. I think it was over Labor Day of 1954. When
52 I arrived in Los Angeles I contacted my brother who was a practicing attorney and a C.P.A. out there. He had already known about this proposition that we were entering into and I asked him to meet me and go over to Mr. Fullman's office. I think it was located then at 1414 Cole Place. We went over there together that day. My brother and Ben Fullman and I discussed the proposition of going into a partnership. At first he wanted to merge City Bonded Messenger & Trucking Service of Chicago
53 with City Messenger of Hollywood. This took place in

Mr. Fullman's office in Los Angeles. I didn't know too much about their operation out there. I asked advice of my brother at the time and he said, "Well, first, I don't know anything about their financial conditions, 54 secondly, I wouldn't suggest a merger." So I think my brother asked him for a financial statement at the time and Mr. Ben Fullman gave my brother a financial statement. Of course, my brother being a Certified Public Accountant looked it over. I was not familiar and wouldn't know too much about it myself. He said to me in the presence of Ben Fullman, "These people have no assets. How can you enter into an agreement of this kind." Ben Fullman said "True, we have no assets." That immediately put a damper on the merger part of the proposition, so Mr. Ben Fullman said, "Well, in what other way can we get together?" So my brother suggested that Mr. Fullman already had 55 the Civil Aeronautics Board permit at the time. My brother wanted to form a new corporation and Ben Fullman informed him that the CAB certificate was not transferable, and we could not enter into an agreement at that time. My brother suggested that I could buy into the present corporation of City Messenger of Hollywood. Ben Fullman said that it cost him in the neighborhood of $12,000 to $15,000, in traveling expenses and legal fees to obtain the CAB permit. We agreed that I would put up $12,500.00 and they would put up the assets and the CAB permit of City Messenger of Hollywood. We were to form a corporation and I was to receive 50% of the stock. 56 It was agreed upon by Ben Fullman and myself that would be the deal.

60 The certificate was issued under the name of City Messenger Air Express and it was not transferable. The only alternative we had, then, was to talk about a merger. My brother took over and he started asking Ben Fullman questions regarding their financial status and Ben

Fullman told him "We have no assets." My brother then told me, "Well, I think that is a bad proposition for you. You will just have to forget about it." My brother asked Mr. Fullman, "What do you think the certificate is worth?" He said, "Well, the time and effort and running back and forth to Washington. We spent a little over $12,000.00." My brother asked, "Well, do you think $12,500.00 would be an equitable amount?" and Fullman said, "Yes."

61 So it was agreed that I would put up $12,500.00 and they would put up the certificate and I was to get 50% of the stock of the corporation. It was not reduced to

62 writing. I had to come back to Chicago, and my brother who is a resident of California, and Ben Fullman were to consummate the deal after I left. While I talked to Mr. Fullman, during intervals, Mrs. Fullman would come in and out of the office.

67 The arrangement regarding the Diners' Club originated out in Los Angeles. I think the Fullmans were responsible for it. It was an arrangement whereby we were to render messenger service for the members of the Diners' Club and to be charged by the members of the Diners' Club. I think Mercury in New York participated. We here, City Bonded, participated and City Messenger of Hollywood participated. Each city was to handle

68 its own calls and to be billed to the Diners' Club and we were to be paid accordingly. It was an unsuccessful venture and I think they kept us on a month or two and just discontinued it. We were operating as individual companies.

As to my conversations with Mr. Fullman in September of 1954, there was much correspondence.

69 Defendants' Exhibit 1 is a letter sent to me by Ben Fullman and it is signed Ben. This was sent prior

70 to March, 1954, and the letter refers to a visit that Mr. Ben Fullman made to my home. Mr. Fullman was

always welcome in my home. I recall a visit he made to my home at that particular time. There were conversations concerning the air freight forwarding business during his visit at my home. It was prior to March, 1954. My wife, Nadine, was present and my son Robert, Mr. Fullman and I were there. At the time he was on his way to Washington to get a permit to operate. We were going to go into this financially together. They needed Chicago as a point of operation and needed it very badly. He couldn't go to strangers for it, and naturally the first one he could go to was me. We were on a very friendly basis. Mr. Fullman was explaining the procedure of air express, air freight forwarding, and how many million dollars some other companies were doing in this business. We had a pretty good ground operation between the three offices, Los Angeles, New York and Chicago, and we would be very well equipped to enter into this business of air freight forwarding. Mr. Fullman said that we would form a corporation and we would start operating the City Messenger Air Express. He needed my financial assistance to get started on this. They did not have enough money to go through with it, and Mr. Fullman said that was why he was calling on me for financial assistance. I think he remained in my house just over night.

Defendants' Exhibit 2, dated May 13, 1954, is office correspondence from Mr. Fullman which was sent to me, signed "Ben". This was a letter sent to me in regard to a receipt book which I was making up here in Chicago for City Messenger of Hollywood and also for ourselves at the time, and it mentioned something about the terms and conditions that we were to print on the receipts for both companies. There were conversations that we had in regard to those receipt books. The contents of the letter are regarding the receipt books and

how I should set them up. I think I printed 1,000 for New York, 1,000 for Los Angeles and 2,000 for Chicago, and Mr. Fullman at the time supplied the copy and all
78 the necessary details on it. The copy included the names, trademarks, telephone numbers, etc.

Defendants' Exhibit 3 admitted in evidence.

79 Witness continues: Defendants' Exhibit 3 dated July 1, 1954, is a letter that I sent to Ben and states that there is enclosed a new rate chart. We will have 5,000 in the mail, also artwork for book covers. Please okay and return via air mail. It will take 30 to 60 days. Elliot does not want them in New York. Please ad-
80 vise. I received a cut for U. S. Air Express. I recall those rate charts that I mentioned in that letter.

81 I received from Ben Fullman on or about July, 1954, Defendants' Exhibit 4. This is an acknowledgement from Ben regarding the copy of the receipt books.

82 I have used the name "City Messenger Service"
83 ever since we have been in business. We have continued using that same name. We also used City Bonded Messenger & Trucking Service. I believe we began to use that name in 1944 or thereabouts. We also used the name City Bonded Delivery Service. I was an individual doing business under that name when I started. About a year after I was in business I formed a partnership with my wife Nadine. That was around 1944. That continued until 1953 when we formed a corporation "City Bonded Messenger & Trucking Service". The City Bonded Messenger & Trucking Service went on until 1956, I think, and then we formed 2 corporations, one of which is "City Bonded Messenger Service" and one "City Bonded Trucking Service," and those are the two present corporations we are operating now.

85 By Mr. Mullin: Your Honor, I would like to reserve the right to amend the title of the plaintiff, because he has just recently evidently changed his name from "City Bonded Messenger & Trucking Service, Inc." to "City Bonded Messenger Service."

By Mr. Cohen: If your Honor please, I think counsel meant "defendant" and not plaintiff.

By Mr. Mullin: Yes. I am sorry. I feel like a plaintiff.

By The Court: You want to amend your answer?

By Mr. Mullin: Yes, in that respect, since there has been a change in the title.

By The Court: From "City Bonded Messenger & Trucking Service, Inc." to what?

By the Witness: To City Bonded Messenger Service, Inc. and City Bonded Trucking Company, Inc.

By the Court: You have two companies now, have you?

By the Witness: Yes, sir.

86 By the Court: What did you do? Did you organize a new corporation?

By the Witness: Yes. What we really did, the operation got too big, and we had to split up the operation.

By the Court: I know, but you had better find out what he did, Counsel. He probably changed the name.

By Mr. Mullin: Yes, sir, I think that is what he did.

By Mr. Mullin:

Q. Which of these two, City Bonded Messenger Service, Inc. and City Bonded Trucking Service is the successor to the City Bonded Messenger & Trucking Service, Inc.?

A. City Bonded Messenger & Trucking Service, Inc. is a successor of the—what is that question again?

Q. I say, which of these two corporations is a successor to the corporation named as the party defendant here?

A. City Bonded Messenger Service, Inc.

By Mr. Mullin:

I see. That is what we will have to amend to, your Honor.

That is all.

87 By Mr. Cohen: If your Honor please, I think counsel would have no objection if the title of this case should include City Bonded Trucking Company, which is this new company, too.

By Mr. Mullin: They are not a party to this. They are a separate corporation that was formed.

By Mr. Mullin:

Q. Isn't that what you testified to, Mr. Mansfield?

A. Yes, sir.

Redirect Examination by Mr. Cohen.

By Mr. Cohen:

Q. Mr. Mansfield, am I correct in assuming that you formed a separate company just to handle the trucking, and formed a separate company to handle just the messenger service? Is that correct?

A. Yes, that's right.

Q. Whereas before both companies or both operations were in one company, City Bonded Messenger & Trucking Service, Incorporated?

A. They were under one name, but it was a separate operation.

88 By Mr. Cohen: If your Honor please, I believe my request is in line, that the City Bonded Trucking Company should be also made a party defendant without the necessity of issuing summons and trial, or on behalf of all parties.

By Mr. Mullin: We have no objection.

* * *

By the Court: Do you want to put in the answer on behalf of the new company?

By Mr. Cohen: Let the answer of both companies
89 stand, or let the answer filed stand as an answer of both new companies.

By Mr. Mullin: We will stipulate to that, agree to that.

By Mr. Cohen: I will stipulate to that.

Witness continues: I operated a business known as
90 the City Messenger Air Express. The starting was contingent with the operation that we had with the Fullmans of the City Messenger Air Service Express. That started when they notified me that they had the
91 C. A. B. certificate. I think it was March of 1954. I had reference to City Messenger of Hollywood, Inc., doing business as City Messenger Air Epress.

Sometime in January, 1955, I registered with the County Clerk of Cook County an assumed name of City Messenger Air Express.

94 BENJAMIN FULLMAN, called as a witness on behalf of the plaintiff, having been first duly sworn was examined and testified as follows:

Direct Examination by Mr. Cohen.

My name is Ben Fullman. I reside at 1258 North Sweetzer, Los Angeles, California. I am an executive connected with City Messenger Air Express & City Mes-
senger of Hollywood, Incorporated, the plaintiff in
95 this cause. Sidney Fullman is the president, Elliot Fullman is vice-president, Norvin Fullman is secretary and treasurer, and Beatrice M. Fullman is a director of the plaintiff company. I have been associated with the plaintiff corporation since 1951. Prior to that time I was associated with Modern Delivery Service. That was a corporation and I was a stockholder. I was associated with Modern Delivery Service from 1937 to 1948.

96 Between 1948 and 1951 I was associated with Anchor Chemical Company. In January, 1937, I was associated with Twentieth Century Delivery Service in Illinois. It was a corporation and I had stock in that company. I was associated with Cannonball Messenger & Delivery from 1935 to about April of 1937. Twentieth Century was located at 441 East Ohio Street, Chicago.

97 Cannonball Messenger & Delivery was located in the Merchandise Mart in Chicago. After I terminated my association with Cannonball Delivery Service I returned to Los Angeles and went into business under the name of Modern Delivery Service. That company also used the name of City Messenger & Delivery. Modern Delivery Service used the name of City Messenger Delivery Service from a month after our incorporation to 1948. I was

98 an executive of that corporation. I had a financial interest in that company. I owned stock in the company. I was connected with it until 1948. During that time we used the name City Messenger Delivery Service on a continuous basis. Modern Delivery Service developed marks to distinguish it from other companies during the time I was associated with the company. In 1937,

99 we developed a large word in print, "City", with a space in the middle of the letters and it had the word "Bonded" put in the space. Then in 1946, we did away with that and had an advertising agency develop the script, "City", with the character of a boy stepping through the C. The name of the advertising agency that developed this last mark was The Perritt Company. Mr. Perritt was

102 the executive officer of that company. I believe he is the president of the company.

I saw plaintiff's Exhibit 2 bearing the title "Minutes of Special Meeting of the Board of Directors of Modern Delivery Service." I saw it in my office at 1120 South

Olive Street, Los Angeles, California, in 1947. This document came out of the records of Modern Delivery Service. I don't know where those records are, whether they have been destroyed or are still in effect. The plaintiff's Exhibit 2 was in the hands of Sam Chess and Sidney Fullman.
103 The document bears my signature. It was affixed on April 29, 1947. On that day a special meeting of the board of directors of Modern Delivery Service was held. The document represents a true and correct representation of the events of that day.

I have seen plaintiff's Exhibit 3 before. It was made in April 1947. The document came from the records of Fullman and Chess, Sam Chess and Sidney Fullman.
104 It was lodged there from the time that it was executed until now. I recognize the signatures on the instrument. The signatures are those of Sidney B. Fullman, Sam Chess, and C. J. Cullom. C. J. Cullom was the secretary of the corporation at the time. The instrument truly reflects the events and purposes of that document. On April 29, 1947, Modern Delivery Service sold the name of City Messenger Service to Fullman and Chess. I know of my own knowledge that Modern Delivery Service
105 received consideration for the execution of these documents. They received $2500.00, paid in cash. I know of my own knowledge that Fullman and Chess operated under the name of City Messenger Service. They operated right along, and then, in 1951, they incorporated into City Messenger of Hollywood, Incorporated, and it is still in operation.

111 I know of my own knowledge that Modern Delivery Service sold for consideration the use of the name City Messenger Service to Sam Chess and Sidney Fullman. The consideration was a little over $2500 and Modern Delivery Service received that money.

I have seen before Plaintiff's Exhibit 4. It was made in 1937 at my direction. It was sent through the mails. We sent out a thousand of them in and through Los Angeles and Hollywood. The heading "City" with the word "Bonded" in between was our mark at that time. The name of the company at that time was Modern Delivery Service doing business as City Messenger and Express Company. It was the company's mark from about July 1937 to 1946. We used that mark. Modern Delivery Service was a corporation and the corporation was doing business under the assumed name of City Messenger Express Service.

Referring to the reverse side of Plaintiff's Exhibit 4, the cards were printed in 1938. They were distributed in Los Angeles and Hollywood, California, and these also contain the mark of the corporation.

Plaintiff's Exhibit 4 received in evidence.

Witness continues: In the latter part of 1951, I was associated with City Messenger of Hollywood, Incorporated. I saw before the letter which is plaintiff's Exhibit 5. The signature on page 2 of this letter is that of Irving Mansfield. I received this letter through the mails. It was in response to a request I had made to Irving Mansfield to settle up a cooperative ad that our company, City Messenger of Hollywood, and Mercury Messenger Service in New York and City Messenger in Chicago had bought from the Diners' Club. I believe it was about six or seven hundred dollars. That is not my stationery. I believe we got that letter from the Mercury Messenger people in New York.

I can identify Plaintiff's Exhibit 6. It is the Bagattelle Magazine put out by the Diner's Club. I received a copy of it. City Messenger of Hollywood received it. I don't know whether City Bonded Messenger & Trucking Service, Incorporated, received a copy of that.

The corporate mark and advertising of each company appears in that magazine. It is to be found on the outside of the cover. The mark that the City Messenger
126 of Hollywood had was the one that we were using at the time.

127 Plaintiff's Exhibit 6 received in evidence.

Witness continues: In the latter part of 1953, I had occasion, as an officer of the City Messenger of Hollywood, to speak with Mr. Mansfield in Chicago. I believe it was the first week in December 1953. It took place partly in his office and partly in his home. There were no others present at our conversation. There were people around there at the office. I spoke quietly to Mr. Mansfield. At his home, his wife was there, but she went into another room or we went into a different room and
128 talked alone. When I first saw Irving in his office I informed him that this was confidential. A group in Los Angeles applied to the Civil Aeronautics Board for a letter of registration to operate as an air freight forwarder. He replied, "That is very interesting." I informed him, "This has a much larger potential than we have at present in Messenger Service, as it will put us on a national scale, as we have already opened an office in New York City." That was the end of the
129 conversation. The next conversation I had with Mr. Mansfield was March 1, 1954. It was a face to face conversation, which took place in his office at 193 North LaSalle Street in Chicago. It was in the middle of the day. There were several people present. We spoke very quietly. I informed him that I was on my way back
130 from New York and had to go to Washington, as our tariffs which we had filed with the Civil Aeronautics Board Tariff Bureau had been rejected because of poor reproduction, and I didn't know when the date of acceptance

would be, as we had to remake the entire tariff. He asked me when I thought we would get started on this air express service. I informed him that I didn't know but I would
131 let him know in plenty of time. There were no remarks at all. He called me the latter part of June in my office in Los Angeles, and he was complaining bitterly about a competitor of his in Chicago that had just landed a very large account he was trying to get. He felt very frustrated and wondered how soon we could get this City Messenger Air Express service going on a larger scale, as it seemed very small at present, and he needed the business. He said he needed the business to build up his sales. I informed him that we couldn't do it this fast, that it requires a lot of finances, and we were short of cash, as we had expended a lot of money in legal fees, travel expenses, printing of tariffs, that he would have to be patient, and if he wanted to speed it up, if he knew of someone who could make an investment of cash into the company, it would
132 help considerably. He said he would look around and let me know. That was the end of our conversation. Between the latter part of 1953 and this conversation we had other correspondence from time to time.

He did not participate in the printing of the air bills. I ordered the air bills to be printed myself. I did not place the order directly with the Uarco Company. While I was in New York, between March and April, within the month of March 1954 I was approached by a representative from the Uarco Company who had been referred to me by Mr. Mansfield, and he had heard that we were going to print a lot of air bills. We told him that we had no definite date when they would be printed, but as soon as they were ready to be printed I would let him know, prepare
133 the copy and rush it to him, that he could give us a

delivery date. He said, "Seeing you are a new account, we can give you a twenty day delivery date or deal." I was informed by the Civil Aeronautics Board that barring any unforeseen technical corrections or difficulties the tariffs would be accepted, so I immediately sent this copy to Mr. Mansfield and asked him to rush it to this Carco Company here in Chicago and order 15,000 air bills for me.

Plaintiff's Exhibit 1 is an air bill.

134 My next conversation with Mr. Mansfield was when he called me on the phone about the middle of July sometime and informed me that he was very dissatisfied with the setup he has with our company, as the amount of revenue he was receiving for the delivery and pickup was insufficient for the amount of work he was putting out. I told him at the time, "You won't get rich on pickup and delivery in any business," that if he wanted more he would have to take some active participation in it. He said, "What do you mean?" I told him the only active participation would be to be a part of the corporation, and then he would have the long term capital gains as a part of the corporation group. He said, "What do you want me to do, make an investment in it?" I said, "It is immaterial to me what you do, whether you merge the two businesses or put money into the corporation." He said, "I will tell you what I will do, I will call my brother in Los Angeles and discuss it with him, and I will let you know." That was the end of that conversation. I

135 called Mr. Mansfield sometime in August and asked him what further thought he had given to this proposition, this previous conversation we had, and he suggested, "Why not get in touch with my brother? Maybe I can work something out." So in the first part of September of 1954, I believe, I called Mr. Mansfield's brother, who was an attorney in Los Angeles, and I made an appointment and

I and my attorney called on him in his office. We delved into the possibilities of a merger. No definite commitments were made at this conference. Mr. Mans-
136 field informed me that he would relay the information to his brother and I would hear from him. In the latter part of September or the first week in October, I don't know which, Mr. Mansfield came out to Los Angeles and we picked him up at the air port and brought him into the city. There was no discussions of any kind of business, and that evening he had an appointment to go to some dinner or affair with his brother, and then Mr. Mansfield came into the office the next day and I asked him, "What are you going to do do regarding this consolidation or merger?" He said, "Well, I still haven't talked to my brother yet." I said, "When will you talk to him?" He said, "I will try to talk to him tonight or tomorrow." That was the end of the conversation. The following day Irving Mansfield came into the office and I asked him, "What is your decision?" He started in by deprecating our company, and told me he was not interested in a merger, that all he wanted was to buy a half interest in the City
137 Messenger Air Express. I informed him that no half interest in City Messenger would be sold, because it was part of the City Messenger of Hollywood, Incorporated, and that could be sold. I said, "The only way you can come into this is by way of a merger or investing money." He said, "I am not interested in investing money." It was a peaceful party, and he was still acting as our pick-up agent in Chicago, and I wanted to be on good terms with him.

He started to make these pick-ups and deliveries in the latter part of May, 1954. Right up to the first week in January he picked up and delivered, picking up items and delivering in Chicago, and picking up items in Chicago and shipping to various points, consolidated ship-

ments, breaking bulk that came into Chicago, shipments going to St. Louis, Detroit, Indianapolis,
138 anywhere within a radius of 300 or 400 miles. Neither Mr. Irving Mansfield nor Mrs. Nadine Mansfield nor City Bonded Messenger & Trucking Service ever contributed any moneys toward the cost of applying for a C.A.B. permit. They never advanced five cents. In fact, I never asked them for any money.

I have seen the original of the document which constitutes Plaintiff's Exhibit 7, a letter bearing the Civil Aeronautics Board heading. We received it by registered mail, approximately the 20th of May. That document is a letter of
139 registration, certifying City Messenger of Hollywood, Incorporated, doing business as City Messenger Air Express, as an air freight forwarder. This is the authority by which we are operating the air freight forwarding business.

Plaintiff's Exhibit 7 received in evidence.

Witness continues: City Messenger Air Express at the present time operates from three points, New York, Chicago and Los Angeles in the radial distance covering the entire domestic United States, Hawaii, Alaska, and we have approximately 350 agents who receive our shipments from our shipping points and make delivery to the
140 consignees and also return shipments from these points to other points in the United States. An air freight forwarder is a firm or person who has the authority of the Civil Aeronautics Board to give a true air bill which guarantees the consignor or the public utilizing these services to the point of destination. An air freight forwarder receives shipments from various cities, consolidates them in one group and ships them beyond to an agent in various cities to be forwarded, bulk broken, and shipped beyond by surface carriers over land by truck or rail.

141 I will describe the operation of the City Messenger Air Express from the time that a request is made for delivery of a piece of material in air freight forwarding. A call is received at one of the central offices and where there is a request for a pickup shipment to be transferred, for example, from Los Angeles to Chicago, the driver, we ask the consignor, who is the shipper, what the package contains, or what the freight contains, the approximate weight; we take it to our central terminal and it is consolidated with other shipments. We purchase reserve space from the air lines, which is confirmed ahead of time, and we ship this consolidated shipment to Chicago, whereby our representative, our employee or an agent, if it is not Chicago, opens this bulk shipment and delivers it to the various consignees, getting receipts
142 for the same, which are filed in the central office. We have on file with the Civil Aeronautics Board an all risk policy, insuring the merchandise up to $300,000.00, and we guarantee safe delivery of this item and are backed by this insurance policy. The service rendered by Mr. Mansfield and the City Bonded Messenger & Trucking Service, Incorporated, was in conjunction or in line with this air freight forwarding business. We had an oral agree-
143 ment with Mr. Mansfield, established, and we sent him a copy of an agency agreement but he never signed it and returned it in the latter part of 1954. We had an oral understanding in December, 1953, that if and when our permit would be granted—we didn't know our permit would even be granted—that he would make pickup and delivery for us in the Chicago area. He was to be compensated for this. The sum was not to exceed the charges as made by the Air Cargo, Incorporated, the delivery agent for
144 the various air lines, plus any advances in moneys that he may have to make to surface carriers beyond

Chicago. Irving Mansfield and I were present when we discussed these terms. It was the first week in December, 1953, at his home.

Plaintiff's Exhibit 8, which is an envelope, looks familiar. It wasn't addressed to me. It was addressed
145 to Mr. S. Fullman, probably Sidney.

I saw Mr. Mansfield about the middle of November, at his home in Chicago. Elliott Fullman, Mr. Mansfield and I were present. The discussion was brought up regarding our activity in Chicago. I informed Mr. Mansfield specifically that the only way these two companies can merge is that City Messenger of Hollywood, Incorporated, and City Bonded Messenger Service in Chicago must be absorbed by City Messenger of Hollywood, Incorporated, and that
146 he would receive a stipulated share of the merged companies. He informed my son and me that he did not want to give up any part of the City Bonded Messenger and I informed him, "You can keep on serving us as delivery and pick-up agent and that is all." That ended the conversation. I was in Chicago in January 1955. It must have been between the 10th and the 15th of the month. Mr. Mansfield had written us a letter informing us that he was resigning as delivery agent for City Messenger
147 and Air Express and asked us to make other arrangements. I saw Mr. Mansfield during the time I was in Chicago. I called on him at his office. Sidney Fullman and I were present. Sidney Fullman came to Chicago with me. I believe it was in the forenoon. We saw Mr. Mansfield, but he refused to talk to me. We stood around there for about an hour or so and we finally left. We informed him where we would be at the hotel if he wanted to get in touch with us. I did not see him subsequent to that time. I did not have any conversation
148 with him. I never made an attempt to see him again.

[February 19, 1957]

152 Witness continues: At no time during the conversations that I had with Mr. Mansfield did I ever represent to him that he was to be part owner in the company or in the operation for which I was petitioning the Civil Aeronautics Authority. At no time did I ever ask him for any funds with which to prosecute the petition. At no time did I ever represent to him that he was any more than an agent for the purposes
154 of picking up and delivering here in Chicago. I have seen the documents that constitute Plaintiff's Exhibit, Group Exhibit 9-A and 9-B.

155 Plaintiff's Exhibits 9-A and 9-B received in evidence.

156 Witness continues: I have seen Plaintiff's Exhibit 10 which is a group exhibit stapled together, containing 4 pages in all. It is the articles of incorporation of City Messenger of Hollywood. They were filed in a public office. These are the articles of incorporation under which the City Messenger of Hollywood is now operating.

157 Plaintiff's Exhibit 10 received in evidence.

Witness continues: Neither Mr. Mansfield, Nadine Mansfield nor the defendants corporation ever tend-
158 ered to me any money for the purpose of becoming a
159 part owner in the operation of City Messenger Air Express.

160 *Cross Examination by Mr. Mullin.*

I am an executive with the City Messenger Air Express and City Messenger of Hollywood, Inc. I make minor executive decisions. I have no title. I am not
161 an officer. I am not on the board of directors, but I am an executive. I make minor executive decisions

in Los Angeles when I am there, or in Chicago, or, when I am in New York, and I travel a considerable part of the time, contacting and policing agents of our organization who make pickups and deliveries for us. I travel about six or seven months in the year. By "policing" I mean we check over their records and check their organizations to see if they have the ability and the organization's service.

I am not an auditor. I am not an accountant. I am
162 not a C.P.A. At the time of the institution of this law-
suit in April 19, 1955, my position was the same that I have now. I don't remember the exact date, but I was president up until 1955. I don't remember the exact date but I was replaced by Sidney Fullman sometime in 1955. I believe I was president for about three years before I was replaced by Sidney Fullman. I believe that would bring it back to 1952 when I became president.

Sidney Fullman was president of City Messenger of
163 Hollywood Inc. prior to that time. While I was presi-
dent, Sidney Fullman was vice-president.

Twentieth Century Delivery Service was in Los Angeles prior to that. I was associated with them there. Cannonball was an assumed name for one of their divisions.
164 That was prior to the time that I was connected
with these companies. Prior to their location here in Chicago, Twentieth Century was located in Los Angeles. Twentieth Century Delivery Service was a company that operated delivery service from Santa Barbara to the Mexican border and as far east as San Bernadino and they operated branches in Santa Barbara, San Diego, Long Beach, Riverside, Santa Ana, and Pasadena, and Cannonball Messenger and Delivery was a special delivery service. They operated locally in Los Angeles.

I was vice-president of these companies. I owned stock
165 in these companies. I was not a majority stock-
166 holder. My association with these companies was

terminated by a freeze-out. The United Parcel Service bought a controlling interest in the company and my job was terminated, so there was nothing for me to do except to take money for my stock and leave. Then I came to Chicago, I believe in 1935. I terminated my relationship with Twentieth Century and Cannonball in California in 1934. As to the symbols or trademarks of Cannonball Delivery, they had the word "Cannonball" in script. The letters were large at the beginning, and when it got to the last letter, the "L" they became smaller and showed the script in the form of speed, by lines. I don't remember if what appeared to be a rotating cannonball was at the end of the last letter of the word Cannonball. I have seen Defendants' Exhibit 5, which is an advertising folder with a service mark appearing thereon. I wouldn't know if that was the service mark that Cannonball in California used unless I could compare the two of them. I said I recall it and I tried to describe what I remembered. It looks familiar. If I could compare the two of them I could possibly say they were similar, if they were, but I am not saying they are unless I can compare the two of them. It looks familiar. When I came to Chicago in 1935 I started a messenger and delivery service under the name of Twentieth Century Delivery Service and Cannonball Messenger and Delivery Service. When I terminated my relationship with Cannonball and Twentieth Century in California, I did not receive any assignment of any rights or trademarks, symbols or trade names of the California companies. I had no authority from Twentieth Century Delivery Service in Los Angeles to use their name here in Chicago. I did not have authority from any one other than Twentieth Century. I didn't think the use of those names here in Chicago would be confusing with the names in California. The reason why I didn't

start a business in California under the same names was because I had a yearning to come to Chicago. I wanted to get away from Los Angeles because I was a little frustrated. I was frozen out of this company, and I felt that new places to conquer gave me a stimulus to go ahead. I was president of the Twentieth Century and the Cannonball here in Chicago. I owned stock in these companies. I believe I was a majority stockholder. I severed my connection with Twentieth Century and Cannonball here in Chicago in approximately 1937 by selling the Cannon-
177 ball Messenger Delivery to a man by the name of Rozran. Mr. Mansfield was one-quarter owner, and I was three-quarter owner, and my wife had returned to Los Angeles and didn't want to come to live in Chicago, and it was very rough on me to commute back and forth to Los Angeles every few weeks, so I decided to sell out. I sold this company to Mr. Rozran and
178 gave Mr. Mansfield his one-quarter interest, and returned to California. After I sold my interest I don't believe Mr. Mansfield continued as a one-quarter owner of Cannonball. Part of the deal I had with Mr. Rozran was that Mr. Mansfield was to remain with the Cannonball Company as a salesman, and he agreed to stay there with them. I believe he was there about four or five years. I severed my relationship with Twentieth Century De-
livery by filing a voluntary petition in bankruptcy.
179 They were not one and the same company and they were not related companies. Twentieth Century Delivery Service was a delivery service serving the wholesale and retail stores of Chicago. It was during depression times and we had received a lot of pressure from the unions, and it made operation very difficult, and the result was that the cost of operation was running far beyond our income, so we had to file a petition in bankruptcy to protect the assets we had. There was no relationship between the

two. Each one operated individually. Cannonball Delivery Messenger and Express was a special delivery service with boys on bicycles and men with private cars running
messages for advertising services and such. I don't
180 believe there were any stockholders other than
Mr. Mansfield and I, in either of these companies. There is a possibility my wife may have been a stockholder in Cannonball. But outside of that there were no other stockholders. When the voluntary petition in bankruptcy was filed for the Twentieth Century De-
livery, the trustees in bankruptcy made a careful
181 check of the operations of Cannonball. The only con-
tact I had was with the trustees and they made a thorough check on the thing, and evidently it was proven beyond a doubt that the operation was all right, and they let us continue. I don't believe the Court appointed a custodian for Cannonball. It was operating all the time. I don't remember if Mr. Irving Mansfield was appointed custodian of Cannonball at that time. I hardly believe so. It could be, I may be wrong. It is possible he was ap-
pointed and kept it a secret from me, but I didn't
182 know of it at the time. If the record is there then
183 it is right. The people whom I listed as being as-
sociated with me in my companies are related to me. Beatrice Fullman is my wife; Sidney, Elliott and Norvin Fullman are my sons. Sam Chess is related to my wife. He was an orphan and moved in with us when he was
fourteen years of age.

184 The members of the group that applied to the Civil Aeronautics Board for a letter of registration to operate as an air freight forwarder were Sidney Fullman, Elliott Fullman, Norvin Fullman, Beatrice Fullman, my wife, and I. Sam Chess was not a member of this group. Sam Chess does not have any interest in the company at the present time. He sold his interest to the rest of the group,

185 I believe in 1952. Sam Chess is not engaged in any messenger or related business at the present time. I don't know offhand how much he sold his interest for. I would have to search the records to find that from our auditors. It was one-sixth interest that he sold in City Messenger of Hollywood.

186 The air bills could be described as airway bills, but commonly the description in the trade is "air bills." I recognize Defendants' Exhibit 2. The Ben Fullman which is typed there in the center, "From The Ben Fullman," is I. That was sent to Irving Mansfield, City Messenger of Chicago. Plain-

188 tiff's Exhibit 1 is the bill that is referred to as an air way bill. That letter you are showing me, you are taking things out of context. There are two different descriptions of things in this letter. The first three paragraphs refer to a copy of the City Messenger bill. I had sent Mr. Mansfield some copy and he had written me saying he had a very good buy on books in Chicago and if I cared to order at the same time he did, he could get me a very good price. I was interested. During the interm these bills were being printed. I wrote to him to

189 start with the number 00001, not 01000. That was a typographical error. It should have been 00001. I remember that very distinctly. I remember the airway bills. That airway bill is the one referred to in that letter. I had designed this air bill and copy had been sent to Mr. Mansfield to order them for me, as they had promised delivery in 28 days. That is not the receipt book that was the subject matter of the first part of that let-

190 ter. I just made up copy for the receipts. These are our receipts that we sent him to print. They look like ours. I refer to it as a receipt book, but the only receipts I had sent him to make for us were our copy, and this here

is his own copy, and was not the ones I sent. I sent him copy of covers. I don't know if I have it in my files
191 here. The printing is just the same. Our copy is different on the back from his. We have our own copy. The face is the same, but I believe the back is a little different, the conditions on the back. In the letter I refer to our copy. I wouldn't be referring to Mr. Mansfield's book. Mr. Mansfield did not have these printed for me. He did have some books printed. Our books were printed at Chicago Sales Book Company. He ordered them from there at the same time he ordered his so as
192 to get a better price. The Messenger receipt books are distributed to the company using the service, and when the messenger calls at a place to make a delivery he fills this out. It is generally made in duplicate and he takes the original with him and leaves the duplicate in the book with the customer, and those receipts are returned with the billing date at the end of the month or week or billing period, or sometimes they are kept in the file and just the tape is sent. It is all according to the terms and the systems they use. These are used by the customer
193 to order a messenger to come and pick up something and deliver it for them. I don't know if they are ever used for an order for messenger service in a city other than the city in which the customer is located. The only use we have for them is for local pickup and delivery.
196 Referring to the parties in this lawsuit, a local company which is engaged only in local pickup and delivery would put only his own telephone number on there. There would be a reason for a local company to put the number in other cities. If he had out of town num-
197 bers on the book he would derive benefit. Messenger

198 services are generally referred to on a national scope, and a firm in New York may have offices in Chicago, Detroit, Los Angeles, and they generally ask their branch offices to do business, if possible, with the same firms that are serving them elsewhere. Therefore, a firm like Foote, Cone & Belding, with offices in Los Angeles, New York and Chicago, would much prefer to do business with a company that is already serving them in those cities, so a local person would have a telephone number of Los Angeles on there and would benefit by that because they possibly notify these people that they have offices af-
199 filiated with a firm in another city. We just answer the phone "City Messenger." City Messenger of
200 Hollywood would answer the phone in Los Angeles. We would answer the phone if Foote, Cone & Belding called in New York for that service. The City Bonded Messenger & Trucking Service wouldn't derive any benefit or revenue from any of those calls that were placed in other cities.

201 Defendants' Exhibit 2 received in evidence.

Witness continues: Defendants' Exhibit 2 is signed "Ben" which is I. It is addressed to "Irving
202 Mansfield," who testified here yesterday. He sent me a note. I believe we have it in our exhibits there, something about 60 days, not responsible, or something like that, and I told him I didn't believe that would be legal. He sent me a form of terms and conditions on which pickups and deliveries are made, for putting on the back of all receipts, and criticized it.
203 I advised him "You will note that on our conditions, first paragraph, that the loss limit is set at $50.00
204 unless a higher value is set or declared by the customer on the front of the ticket at the time the shipment is tendered to the driver for delivery. In case a higher limit

is set then an extra charge is made for the excess valuation. The terms for C.O.D.'s poorly wrapped are about the same." I told him that these limitations wouldn't stand up in court, and then I said "Enclosed you will find examples of the terms and conditions that we accept ship-
205 ments." I sent him a form of ours. I said "The number on the Air Way Bill is not the registration number, but the place that I want each bill numbered beginning '01000' and up." What I really intended to say was "00001." That is the way they came. I said, "Have them rush proofs to you, and send them on to me."
206 I meant exactly what I said. He was ordering some receipts for me, and I wanted to be sure that they were correct because the Public Utilities law in California is a little different than it is here.

I can identify Defendants' Exhibit 7. It is a photostatic copy of a letter which I furnished to you for photostating and I note that this "terms and conditions"
207 has been attached over part of the date. It just shows the year 1954. I believe it was written subsequent to the letter of May 13, 1954, to Irving Mansfield. The date on the original letter shows May 11th and the
208 date of the answer is May 13th. I recognize the handwriting. It looks like Mr. Mansfield's handwriting. It is addressed "Dear Ben," and concludes with "Yours, Irving."

Defendants' Exhibit 7 received in evidence.

211 Witness continues: I testified concerning some receipt books. The receipt books are also referred to as ticket books. I can identify Defendants' Exhibit 8, a letter dated May 1, 1954. The signature "Ben Full-
212 man" is mine. The Irving Mansfield to whom the letter is addressed is one of the defendants in this case. The first sentence of the second paragraph has no relationship to the order book or ticket book or receipt

book. The paragraph appearing on page 2 of the letter under the heading "ticket books" is related to the book I asked him to order for us.

Defendants' Exhibits 6 and 8 received in evidence.

Witness continues: I did not prior to May 18, 1955 or '54 discuss with Mr. Mansfield his entering into the business with me and the formation of a corporation or some entity to handle the air freight forwarding business. I sent the telegram which constitutes Defendants' Exhibit 9. It was addressed to Irving Mansfield, City Bonded Messenger. There is a difference between the telegram and the letter because when we write telegrams we economize and use only the words that are necessary to create a certain thought to the recipient. It wasn't a matter of occurring to me to use City Messenger of Hollywood, Inc. rather than City Messenger Air Express. It was just economy in writing a telegram.

Defendants' Exhibit 9 received in evidence.

Witness continues: Referring to the period from May, 1954 to January, 1955, a period during which the defendants were associated with us, the main office of City Messenger of Hollywood, Inc. doing business as City Messenger Air Express was located at 1414 Cole Place, Hollywood, California. The books and records of the business were kept there. The agents, as a rule, bill the nearest office from where the shipment originates. If the shipment originated in Chicago they would send the receipt to Chicago; if it originated in New York, they would send the receipt to New York; if it originated in Los Angeles, the receipts were sent to Los Angeles and they, in turn, were instructed to forward them to the central office in Los Angeles for payment. I was referring to bills, invoices, receipts and air bills. When I say "air bills," I

mean if the item was re-forwarded over another air line from that station. We bill customers who call up our New York office for service from New York. The anditing copy is sent to the main office for bookkeeping records. The billing in New York is done for both the Messenger and for the Air Express. It is done for both companies, City Messenger in New York and City Messenger Air Ex-
press. The Chicago billing is done from 845 South
222 Wabash Avenue. From May, 1954, to January, 1955, we did not have an office at that time, so the billing was done in Los Angeles. We applied for our CAB license in the latter part of 1953 or the early part of
223 1954, either of those times. At that time our corporation had an office in New York. We had an office and terminal in New York and we had an office and terminal in Los Angeles. We owned some trucks and vehicles. I don't know offhand what trucks and vehicles we had. I would have to go and check my records. I don't remember how many we had but I do remember that we had
224 some. We had an office and terminal in Los Angeles. The terminal is located at 1414 Cole Place. A terminal is a place where freight is received and dispatched. Trucks or other vehicles are not maintained at the terminals. We did not have any garage or facilities for maintaining trucks. Our office and terminal in New York was at 203 East 36th Street. We had a receiving
225 office at 727 West 7th Street in Los Angeles, California. A receiving office is where messengers receive and pick up packages and deliver them or leave them there to
226 be transferred to another messenger or driver. We just had a receiving point. Our offices were located at 1414 Cole Place. A receiving point was a place where the messengers left their packages and picked up packages. A telephone operator was in attendance. It was not an

office. Our offices were at 1414 Cole Place. 300 South Beverly Drive, Beverly Hills, California, was also a receiving point and a telephone station for our men. It was not an office. We had no office in the Rockefeller
227 Plaza in New York. In 1954 we had no leases. We were on a month to month tenancy in 1954. We did have a telephone receiving station in Rockefeller Plaza. The New York telephone company has facilities there for people like us. They have all kinds of phone booths and they have four or five telephone operators who receive messages for you and you can utilize their facilities.
228 We did have a lease for our office at 1414 Cole Place. We had in Times Square a telephone receiving station on the same order that we had at Rockefeller Plaza; the same in Columbus Circle; the same at Grand Central; and the same at Battery and Wall Street. The facilities
229 in those places are given free, and we pay for all the
231 outgoing calls. Anyone is at liberty to use them. It is not a pay phone. Anyone can use its telephone facilities. They have telephone operators there with a series of telephones, and you pay your money at a desk, you go to the operator and tell her what number you want, give her the number, and she gets the number and gives you one of the booths to use. They also receive messages there.
232 Anyone can use them, the public, or anybody. Prior to March, 1954, City Messenger of Hollywood, Inc., or City Messenger of Hollywood, Inc., doing business as City Messenger Air Express, had no office in Chicago. I don't believe we had a telephone listing here. We had no pickups or deliveries here. We did not make any pickups or deliveries, have telephone listings or maintain an office
233 in the Chicago area including neighboring cities in the State of Indiana. We have done it since March, 1954. We opened up an office in January, 1955 in Chicago. We

did not have an office in Chicago or within 500 miles
234 of Chicago prior to that time. We picked up in In-
dianapolis and we had agents within 500 miles. City
235 Messenger Air Express or City Messenger of Holly-
wood, Inc., doing business as City Messenger Air Ex-
press, has made pickups and deliveries of air express since
1954. We started doing that in January, 1955. Prior to
that City Bonded Messenger made the pickups and de-
liveries for us. City Bonded Messenger is the defend-
236 ant. I can't answer whether we have made any pick-
ups or deliveries for anything other than Air Express
since March, 1954, because I am not located in this office.
I just come here on visits. Whoever was in charge at the
time would have that information. We had three managers
here. The first manager was a fellow by the name of
237 Brunhardt. I think they called him Bill, Bill Brun-
hardt. I don't know if he is available. He is not
connected with us any longer. He had become quite frus-
trated with the whole thing, and he quit. The next man-
ager was Harry Shane. He had the same frustrations and
quit. The last person there is my son, Norvin Fullman.
He is running the office at present. I hardly believe any
of the principals of the corporation would know about these
pickups other than these managers, unless there was some-
thing outstanding on the item, that they would bother some-
one from New York or Los Angeles as to what is going
on here, because it was all routine matters unless they
238 wrote about it. Norvin would be the only one. He
is the manager now. I don't know the dates of the
employment of these managers. I don't remember the
time when Brunhardt quit. Norvin, I believe, has been
here since the 1st of August. No, I believe it was later
than that; the 1st of October, maybe. Sidney could answer
that. I don't keep a tab of the movements. We have some
written contracts and some oral agreements with the 350

exclusive agents throughout the country, Alaska and
239 Hawaii. An agent's duty is to receive freight. He is alerted when freight comes in, and he picks it up at the airport and delivers it if it is in his destination city, or if an agent is a transshipper or at a transshipping point like Los Angeles or Chicago, Dallas or San Francisco, he transships it to a point fed by a feeder line to another one of our agents. In the same way they originate ship-
ments in the first places and ship them back to the
240 center points or the main cities like Chicago, San Francisco or New York. There is an expenditure required by these exclusive agents in order to serve us. They make advances sometimes to surface carriers going beyond their point. For example, a shipment would come in going to a place like West Point, New York, so if it is to this place in New York he would put it aboard a bus after he took it from the air port, and would pay the bus company advances for the charges, prepay it to that point, and then he would bill for the charges and services he rendered. There are many cities in the United States, Alaska and Hawaii where we do not have exclusive agents. When we have a shipment to such a point, we transship it. We notify the consignee to come and pick it up at the air port where it is left for him, or at the railroad station or the bus depot. We furnish these agents with the necessary printed forms
and materials necessary for them to operate as our
241 exclusive agents. These exclusive agents probably print up or order or expend moneys on printed materials other than those we furnish them. These agents are also local draymen or trucking companies in these communities, and they have their own business, and probably from time to time they print stuff of their own, advertising that they are agents for City Messenger Air Express, which enriches their standing in the community and also en-

riches their revenue by getting shipments originating in their cities.

We do not have any telephone listing of City Messenger of Hollywood, Inc. other than in Los Angeles and New York and Chicago. There are quite a few other companies who are engaged in the air freight forwarding
242 business. Some of them do handle air shipments for other companies. I believe that some of those who are included in the 350 exclusive agents do that. I have asked some of my exclusive agents to order or prepare printed forms for me. I can name one or two of them—the Triple A Distributing Company in St. Louis; Wings and Wheels Service Company in Dallas, Texas; Aero Messenger and Delivery in San Francisco. They printed up some advertising forms that they use as stuffers in their community. They did not print any air bills, any mes-
243 senger books, any ticket books, or anything connected with the actual operation of my company, outside of the advertising fliers. None of these 350 exclusive agents at any time guaranteed my credit with air lines, Western Union, Air Express or any other service with whom
245 I had business. I never saw the letter that constitutes Defendants' Exhibit 10, signed by C. H. Kuehne, credit manager of United Air Lines, addressed to City Bonded Messenger & Trucking Service, neither did I authorize a reply of it. I very distinctly recall making a telephone call from Los Angeles to Irving Mansfield on August
246 23, 1954. I can't tell you what the telephone call was unless I have a chance to preface what caused the telephone call. Mr. Strynmeyer, I believe, sales manager of the United Air Lines in Los Angeles, called our office and told us, "There is some difficulty with your account in Chicago where the main office of United Air Lines is. There are charges coming through there on the City Bonded Messen-

ger and the City Messenger Air Express and they don't know which is which, and, as your account is growing, we want to cut off your credit temporarily until such time as you can contact Mr. Kuehne and straighten this matter out." He said, "Will you call him?" I said, "No; better than that, I will call my agent in Chicago and have him call on it." So, I called Mr. Mansfield and asked him to call on Mr. Kuehne at United Air Lines, explaining to him what had happened and straighten him out with what information he could, if he could do it and, if not, to phone me. Mr. Mansfield called on Mr. Kuehne and straightened out
247 the matter. I did not authorize Mr. Mansfield to make any commitments for the City Messenger Air Express without notifying me first. Mr. Mansfield called me back the next day and stated, "I got you all fixed up. I am personally writing a guarantee." I said, "You didn't have to do that, we have credit." He said, "Well, it is all straightened out. Forget about it." Our credit was cut off for one day before I called Mr. Mansfield. Mr. Mansfield acted immediately and the next day our credit was reinstated. I called him as a friend to call up there and see Mr. Kuehne and what it was, because they had City Bonded Messenger of Chicago and City Messenger Air Express mixed up.

248 *Redirect Examination by Mr. Cohen.*

The precise name of one of the companies in Chicago which I was operating in the '30's was Twentieth Century Parcel Service. The name of the company in Los Angeles was entitled "Twentieth Century Delivery Service." When I had occasion to form Twentieth Century Parcel Service in Chicago in the '30's I did make a check to determine whether or not I had the right to use such name in the State of Illinois and in the City of Chicago. The checks were negative. There was no one operating a

249 delivery service. My attorney made a check of all the records in the county and said that those names were clear and that I could use them. Prior to the time that I formed the corporation known as Cannonball Bonded Messenger Service, Incorporated, in Chicago, Illinois, I made an effort to determine whether or not I could use that name in Illinois. I had my attorney make a check of all the special delivery services here in the city and he notified me that there was no one operating a special delivery service under that name and I told him to go ahead with that name
250 and use it.

I have known Irving Mansfield since 1935 and we have been good friends since that time up until January, 1955.

I can identify Plaintiff's Exhibit 11. That is a copy
251 of a book that we use in Los Angeles and New York, a messenger book. That is one of the books. I don't know the exact date that book was printed, but that is the book we have been using the last two or three years. Defendants' Exhibit 6 and Plaintiff's Exhibit 11 are not identical. They are different. Ours is different from the one that they have. The only similarity is that they have the boy with the "City Bonded" on there in reverse color. That is the only similarity of the thing. The inside material is not identical. On the book City Messenger of Holly-
252 wood, we have, in the upper left-hand corner, "New York, Chicago, Los Angeles, Hollywood," and "Beverly Hills," and the City Messenger of Chicago on the front, on their book, in the upper left-hand corner is "Main Office, Randolph 6-6001. Truck Terminal, Michigan 2-6500." The next two lines are similar. Under that, where we describe our services, "Rush Special, regular, deferred, route," they have "rush special, expedite deferred weight." The next line, "Waiting time," "O.K.'ed by" is similar. Down at the next, where it says, "Pick-up from," it is similar to ours. The "address" is similar

to ours. "Delivered to" is similar to ours. "Address" is similar to ours. "Received by" is similar to ours. City Bonded Messenger has special instructions down at the bottom. We don't have that. We have the special instructions made up in a box. The copy sheets contained in these books and the terms and conditions on the reverse side of the copy sheets are a little bit different. I can't read the print, it is too small, but, from the paragraphs and the way they are printed, there must be some different wordings in there. The paragraph on page 2 of Defendants' Exhibit 8 refers to Plaintiff's Exhibit 11. We printed one thousand books for New York and one thousand books for Los Angeles. Plaintiff's Exhibit 11 is used in the regular course of business of City Messenger of Hollywood.

Plaintiff's Exhibit 11 received in evidence.

Witness continues: I have never asked any of my agents to guarantee credit for me at any time, in relation to the operation of City Messenger Air Express. I did not ask Mr. Mansfield and the defendant corporation, City Bonded Messenger & Trucking Service, Incorporated, to guarantee credit with any person, firm or corporation during the period from May, 1954, to the second week of January, 1955. In the course of the business operations of City Messenger Air Express, I or someone else in the plaintiff corporation have had occasion to call an agent to clear up local difficulties. Sometimes we send a shipment out prepaid and, through an inadvertent error on the part of the clerk, or the air lines' office, it is not marked "prepaid," and it arrives "collect," and the agent would phone us and say, "This item came collect; do you want me to pay for it or do you want to clear it up?" I would clear it up. Or, the agent would call me and say, "We have too many shipments by

carriers and we don't feel we want to advance this money. Will you please open up a charge account under the name of your own company?" They would get the information as to who the credit manager was, and so forth, and, either one of the members of our company would make a trip down there, or, we would clear it up by telephone. As a rule, it is cleared by telephone. We would ask our agents, from time to time, to insert advertisements in the yellow book and to pay for it and we give them back the money. From time to time we call them and try to enforce collection on unpaid shipments that came into their community "collect" and were inadvertently left uncollected after the bill was sent and the customer was slow in paying.

I am not the person most familiar with the operation of our office in New York City or in the New York
257 community. Elliott Fullman would be that person. I don't concern myself too much with local geographical conditions and the member of the firm in charge of that district expedites the easiest way of operations. Naturally, visiting there from time to time, I would question it
258 and get enlightened as to what was going on. I did not authorize City Bonded Messenger & Trucking Service to affix the telephone numbers listed for New York and Los Angeles on the cover of Defendants' Exhibit 6. No one that I know of in City Messenger of Hollywood authorized the defendant corporation.

Recross Examination by Mr. Mullin.

261 Referring to Plaintiff's Exhibit 11, there is no Chicago number appearing on it. There is a Chicago number appearing on Defendants' Exhibit 6.

The first paragraph of the letter of May 1st reads
262 as follows:

"The enclosed copy for the 3 part snap-out forms shows slight changes from our present layout. You

will note that the righthand side has a place for authorizations by the shipper or customer where item is picked up. This is an important feature, as the signature of the sender in the appropriate place will speed payment of many questionable charges such as for instance those where a customer requests pickup at a location other than their own plant and then delivery to a third location and a third party. The upper righthand corner has a place and space allocated for an account number or identification, also an aid in customer identification, such as where customers have similar names, large firms where different departments are using you but are billed separately, out of town charges such as may occur on instruction for pickup on City Mesesnger Air Express, and other varied situations."

263 "You will note that the phone numbers of each city appear. If you wish an additional phone to appear on your Chicago forms you may insert if space permits."

264 I did not authorize anything. I was telling him about the copy here, and if he wanted to make something similar to ours he could. He was using that in Chicago. They were not my forms; they were his forms. I don't know what he was going to order for himself.

265 I didn't see his copies. We made a check before we opened up our office and came in here under the City Messenger of Hollywood doing business as City Messenger Air Express. Mr. Mansfield was using the name "City Messenger Company." He had come to Los Angeles in the early part of the war and visited my establishment called "City Messenger." That must have been prior to the time he opened up, and then he returned to Chicago. Mr. Mansfield was operating the City Messenger. I knew

266 that. It was City Bonded Messenger. Mr. Mansfield knew also that we were opening up on the City Messenger Air Express.

Plaintiff's Exhibit 12, which purports to be a tele-
267 phone order in triplicate, looks like the ones we use.
City Messenger of Hollywood developed that form. It was printed to City Messenger of Hollywood's specifications. City Messenger of Hollywood is using that form at the present time, in the operation of City Messenger service in Los Angeles and City Messenger service in New York. It would be used only where the messenger was giving an order to pick up City Messenger Air Express shipments. This involves a telephone order form.

268 Plaintiff's Exhibit 12 received in evidence.

Witness continues: Some of the telephone order forms which constitute Plaintiff's Exhibit 12 were printed in 1954. We also had the forms before 1954. That specific form was printed in 1954 while we were operating City
269 Mesenger Air Express.

Recross Examination by Mr. Mullin.

Those are not pickup tickets, they are telephone order forms. As the order comes over the telephone the telephone operator writes those out and hands them to a dispatcher, the white copy going to the messenger, the yellow copy going on the dispatcher board, and the pink copy is used in case something happens to the other two. It is
270 only used as a pickup form in the Messenger pickup service. We were not engaged in messenger service here in Chicago in 1948.

271 *Redirect Examination by Mr. Cohen.*

273 City Bonded Mesenger Service used the order blanks in 1954. We drew up those forms because it would expedite the handling of City Messenger Air Express shipments. We used them in Chicago. We suggested that for use in Chicago to Mr. Mansfield. Mr. Mansfield used it. He used it from the time he began serving City Messenger

Air Express until he was supposed to quit using them in 1955. Whether he still uses them, I don't know. When I say I used them I mean Mr. Mansfield used them. Mr. Mans-
field did use the forms in the operation of City Mes-
274 senger Air Express business. That is just a pickup order. Air Express had nothing to do with that. If he picked up an air express shipment there was an Air Express bill that went with it. Each one of the shippers had copies of our air bills.

276 SIDNEY B. FULLMAN, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Cohen.

277 My name is Sidney B. Fullman. I am 35 years old. I reside at 1258 North Sweetzer, Los Angeles, California. I hold a position with the plaintiff company. I am at present president of City Messenger of Hollywood. I hold a stock interest in that company. I have been associated with the predecessor company of Fullman and Chess since 1947, and with City Messenger of Holly-
278 wood since its inception in 1951. I have seen the instrument which constitutes Plaintiff's Exhibit 13. I first saw it on or about October 1, 1947. This particular document was mailed to me by the Valley Times. The Valley Times is a public newspaper and is published in Los Angeles County, Los Angeles, California. It is
279 a daily newspaper of general circulation. I caused the ad which is affixed thereto to be published in the newspaper. It represents the things and purposes for which it was published. This exhibit has been, since October of 1947, in my personal envelope in the files of City Messenger of Hollywood. We operated

a business under the name of City Messenger of Hollywood. It was a pickup and delivery or package service and special delivery service. We operated that business in Los Angeles, California. At the time of that instrument it was a partnership. My partner was Samuel Chess.

282 I was employed by the City Messenger of Hollywood, a California corporation, from February, 1951 and I am still employed there. Prior to the formation of the plaintiff corporation I operated the messenger business in partnership with Mr. Chess. The name of that business

283 was City Messenger of Hollywood. Its offices were located at 6512 Selma Avenue, Hollywood, California. It was originated on or about April the 29th, I believe, 1947. That business continued until February 19, 1951. On that day City Messenger decided to take the assets of City

284 Messenger of Hollywood and incorporate the company into a new corporation. This was done. The successor to the business of Samuel Chess and Sidney Fullman, doing business as City Messenger of Hollywood, is the plaintiff corporation. We were doing business on Monday, June 9, 1947. I caused advertisements to be published in the

285 newspapers in that community. I have seen Plaintiff's Exhibit 14 previous to today. I first saw it about three or four days prior to the appearance of this ad in the paper. I saw the paper on June 9, 1947. That is an actual sheet from a paper published on that day by that newspaper. The name of the newspaper is Los Angeles Herald and Express. The ad appeared in the newspaper on the

286 day that this document bears. This paper has been in my personal files at City Messenger of Hollywood since Monday, June 9, 1947.

287 Plaintiff's Exhibit 14 received in evidence.

Witness continues: After returning from the war on February 22, 1946, I went to work for Modern Delivery

Service in the Hollywood office as the co-manager because Mr. Sam Chess was already operating as the manager of the office. He and I operated as co-managers of the office until approximately April the 29th of 1947, when we purchased a customer list from Modern Delivery Service and the right to use the name City Messenger and its identification and marks in the area, in the Hollywood area, and in such areas where it would not compete with Modern
Delivery Service's downtown operation. They retained
289 the right to use the name in the downtown operation.
The consideration for this was $2,547.00. We paid it off in installments. Originally we had a year to pay, but we paid it off a little before that and I think it took us about seven months in installments. This money was paid to Modern Delivery Service.

I have Plaintiff's Exhibit 15. I first saw this some-
290 time in January, 1948. I caused this document to be
prepared. It is not the original. This is the copy that was in my files. The original is on file with the United States Government. That is a true and correct carbon copy. It is the only copy we retained. On line 21 it shows that $4,832.46 were the total taxable wages paid during a
particular quarter. That money was actually paid.
291 It was paid by Sidney Fullman and Sam Chess from
the account in the Hollywood State Bank. It was paid to the people listed on that sheet in the amount there indicated for the quarter ending December 31, 1947. In reference to Plaintiff's Exhibit 15, the heading on these particular forms is normally prepared by the governmental agency. It is already prepared so that the number on the
bottom will be correct. They have this number and
292 they want to make sure that their files are correct, so
they prepare this information themselves, the heading on the form, so their accounts won't become confused.

That instrument came to me with that typing on it. The rest of it was typed at my direction.

Plaintiff's Exhibit 15 received in evidence.

[February 20, 1957]

295 Witness continues: I testified that Mr. Chess and I paid $2,547.00 to Modern Delivery Service for the name City Messenger Service and other assets. An agreement between our corporation and the Modern Delivery Service existed. The date of that agreement is on or about April the 29th of 1947. I did on or about that day
296 actually receive the assets for which I paid the money. This bill of sale actually existed in the corporate records. I don't know where those corporate records of the bill of sale or a copy of the corporate sale or agreement is. Plaintiff's Exhibit 3 is the agreement that I received from Modern Delivery Service from Miss Culhuin, the secretary of the corporation. I signed the original of this
297 the previous day. The original is in the records of the Modern Delivery Service. I don't know where those records are. I have made an effort to find the records of Modern Delivery Service. I haven't found them. I saw the original agreement that was
298 executed by the corporation. This instrument does not differ in any way from the original document. It
299 contains all the signatures of the parties involved in this particular instrument. The original document contained the actual signature of Ben Fullman, President. The signature of Elliott Fullman, Vice-President, actually appeared on the original document. After the execution of that document, Sam Chess and I took over the office at 6512 Selma Avenue in Hollywood, California. We op-
300 erated under the trade name of City Messenger of Hollywood. We started operating the following day, April the 30th. That was the date of this instrument. This

instrument came into my possession the day after the agreement to sell. I remembered that we had forgotten to obtain a copy of the sales agreement and I went down to the office of Modern Delivery Service myself with Sam Chess and we asked Miss Cullum, who was the secretary, to prepare a copy of the sales agreements. The signatures of Ben Fullman and Elliott Fullman do not appear because they weren't there when Miss Cullum typed up this instrument. I didn't think it was necessary for me to go to them subsequent to that time and ask them
301 to affix their signatures, because it was my brother and my father. I knew that they would agree to the instrument. We operated City Messenger in Hollywood until February 19th of 1951. During that period
302 of time we used the word in script "City" with a boy, a cartoon character running through the scene, which we used continuously during that time.

303 I testified that the City Messenger of Hollywood was a successor to the copartnership of Samuel Chess and Sidney Fullman doing business as City Messenger of Hollywood. At the time of the incorporation of the plaintiff in this cause, in exchange for 100 shares of stock each,
304 Samuel Chess and I sold the interest in our assets, or the remaining assets after our obligations had been paid off, and in exchange for the remaining assets we received 100 shares of stock in the City Messenger of Hollywood. Trademarks, symbols, names and the like which belonged to the copartnership were trans-
305 ferred to the corporation. The symbol of the word "City" with the messenger boy running through the letter "C" which appears on Plaintiff's Exhibit 6, constituted an asset sold to the plaintiff corporation. Immediately after the copartnership transferred that sym-
312 bol the corporation began using that symbol. Our
313 corporation did use other symbols subsequent to the

time it was incorporated. The plaintiff corporation used the script "C-i-t-y" with the boy running through it. The plaintiff corporation did not use any other symbol that I can recall. The plaintiff corporation has
314 been using the symbol continuously since February 19, 1951. In the year 1951 the plaintiff corporation used that symbol all over the country. That included Los Angeles, New York, Chicago, and wherever this Bagatelle Magazine was distributed, and I understand it was in the 48 states. In 1952 the plaintiff corporation used that symbol all over the country. The plaintiff corporation was using the same symbol all over the
315 country during the years 1954, 1955, 1956 and 1957. The first use of that symbol in the State of Illinois was on or about October, 1951. Prior to 1954, the plaintiff corporation solicited business in the State of Illinois. In our Diners' Club promotion, in 1951, we solicited business in the Chicago area from persons who had residences
316 or businesses in the Chicago area who would use our service for particular transactions that could be performed in the Los Angeles area. In other words, if a person had some baggage coming out to Los Angeles from Chicago, we could pick that up at the station and deliver it to the hotel. We solicited business from advertising agencies which had offices in Chicago, who had traveling account executives coming to Los Angeles and would require messenger service from their hotel rooms or from residences where they were staying and who did not, possibly, have established credit in the local Los Angeles area. We could perform this service for them in Los Angeles on a credit basis.

317 During the years 1951, 1952 and 1953, the plaintiff corporation did have occasion to send mail into the Illinois community. The mail contained the symbol of our company. Some of this advertising material bearing the

symbol of the plaintiff corporation was directed to Irving Mansfield or City Bonded Messenger & Trucking Service. On or about the second week in July, I directed a communication to Irving Mansfield outlining a conversation that I had had with Mr. Al Bloomingdale, president of the Diners' Club. This conversation was that Mr. Bloom-
318 ingdale was interested in enlisting a messenger service or messenger services in the Diners' Club booklet, which was their credit card booklet, and to advertise in their magazine, the Bagatelle, the fact that the Diners' Club could receive national messenger service. I asked him if he was interested in being listed on the card and in the magazine. I informed him also that I was writing a similar letter to Mr. Anthony Roper of Mercury Messenger Service, inquiring if he was interested and that if he was he should reply to me or to my father and they could get together at some place mutually agreed upon to discuss the details. This letter was on the
319 letterhead of the plaintiff corporation. This was in
320 1951, on or about the second week in July. Plaintiff's Exhibit 16 is a carbon copy of the letter that was sent.
321 However, it bears the signature of my father, Ben Fullman. I typed this letter. I recall that I asked
324 him to sign it because I didn't know Mr. Mansfield
325 that well. On or about May, 1954, I caused to have sent to Mr. Mansfield certain forms to be printed in the Chicago area, bearing our symbol and mark and also sent some correspondence relating to City Messenger Air Express operations in the area and the contemplated operations in the Chicago area. I had conversations with Mr. Mansfield or a representative of the defendant corporation during the period of time he was rendering service for our company.

330 City Messenger of Hollywood is operating under the authority contained in a copy of a letter from the

Civil Aeronautics Board which constitutes Plaintiff's Exhibit 7. By reason of that permit the plaintiff corporation is conducting air freight forwarding service. We first started rendering that service on the effective date of our tariff, May 22, 1954. City Messenger Air Express, the assumed name under which the corporation is operating, is an air freight forwarding service. We act as an intermediary for a shipper in the performance of express, air express and air freight service in the United States and
in the territories. Our operations consist of picking
331 up packages at shippers' doors, consolidating such
shipments in our terminals, carrying such consolidated shipments to the air ports, availing the shipper and ourselves of the most economical and efficient form of air carriage to a forwarding city, expediting the shipment while en route, maintaining the full responsibility for the shipment from the consignor's door to the consignee's door. As a consequence, we maintain complete insurance coverage, protecting the shipper and ourselves against damage to the shipments en route. City Messenger of Hollywood, doing business as City Messenger Air Express, does not conduct a local delivery and pickup service
in any community. With reference to pickup and
332 delivery in the Chicago community, it will perform
pickup and delivery, but it must be in connection with a forwarding movement.

I was in Chicago in January, 1955. I had conversations with the members of the defendant corporation, specifically Irving Mansfield. It was on or about January the 4th or 5th. It was a Monday. I had arrived in Chicago by air as a consequence of a letter from Mr. Mansfield to Mr. Fullman that he wished to terminate his agency ar-
rangement with City Messenger Air Express. There
333 were actually a number of meetings. At the first

meeting he came to the air port and picked me up in his car and brought me into his office. En route, we had some conversations. These conversations related to City Messenger Air Express operation. Mr. Mansfield first said, "What's the matter with you fellows? Why don't you pay that money you owe me?" My reply was, "Irving, I think we do owe you some money. How much do we owe?" He said, "You
334 owe me plenty." I said, "How much, specifically? You never rendered me any bills." He said, "You owe me better than $1500." I said, "That is a lot of money." He said, "Well, you can come into the office and you will find out about it." I said, "That is all right." We
335 did go to the office. The office was located at 193 North LaSalle Street. It is a store, in my estimation a relatively small store. There is a ground floor, where they conduct their operations. It is partitioned off. There is a partition in front, sort of a railing partition behind which a dispatcher performs his operations. There is a partition behind which is conducted some type of bookkeeping operation. There are telephones in two different points in the office. They have what is known as a turret board for the dispatchers, with many trunk lines and some other types of telephone lines terminating in that box. Upstairs, on a small balcony there is a small space for one desk and on this is also a telephone. The telephone under the number Randolph 6-2931 was
336 located on the balcony where the desk was located. The telephone rang in my presence. There was a woman upstairs who answered the telephone. She answered it "City Bonded." That is the telephone number that was appearing in the Red Book during the year 1954 as City Messenger Air Express. It was the telephone that I had requested Mr. Mansfield and City Bonded Messenger
337 & Trucking to secure for me. On the 19th day of

January. I contacted the Illinois Bell Telephone Company. I spoke to the manager of the business office.
338 The purpose of the conversation was to remove the telephone, Randolph 6-2931, from 193 North LaSalle Street, and to hold it for me and my City Messenger Air Express until we could find a permanent location in Chicago. We had already terminated our association with City Bonded. The reaction of the Illinois Bell Telephone Company was "I will check the records." They did check the records. They called Mr. Mansfield in my presence and asked him if they should remove this Randolph 6-2931
339 number from his office at 193 North LaSalle Street. The telephone company said that Mr. Mansfield was the one who applied for this number. I said, "No, it is City Messenger Air Express." They did not permit me to remove that telephone number. The reason they gave me was that the responsible party was Irving Mansfield and this phone had been applied for by Irving Mansfield under the name "City Messenger Air Express" and so far as they knew that was the City Messenger Air Express, or it was Irving Mansfield, and I replied, "I can show you our permit from the Civil Aeronautics Board for we are the City Messenger of Hollywood doing
340 business as the City Messenger Air Express." I did show it to them at that meeting. The manager of the Illinois Bell Telephone Company said, "I really have no authority to remove that telephone from there even though you prove to me you have the right to use the name City Messenger Air Express by the Civil Aeronautics Board. Irving Mansfield is still the party who applied for this telephone and as far as we are concerned, it is his telephone." We have never been able to secure the removal of that telephone. We got a telephone num-
341 ber. They said they could only give us an unlisted telephone number. We got an unlisted number one

month after on or about February 19, 1955. We didn't have the telephone in the name of City Messenger of Hollywood doing business as City Messenger Air Express during the period of time from January 19, 1955 to February 19, 1955. We had no service whatsoever from the Illinois Bell Telephone Company. On the 19th of February we had services under an unlisted telephone number. We never secured a telephone number with a listing from the Telephone Company under the name City Messenger Air Express. We secured a listing under the name CMAX Air Freight, in December, 1955 Classified Directory. We never had services as a listed number between the
342 19th of February, 1955 and December of 1955.

I never made any representations to Mr. Mansfield
343 that he would join with City Messenger of Hollywood in the ownership of the air freight forwarding business known as City Messenger Air Express. I had conversations with Mr. Mansfield relating to ownership or participation in that business on July 4, 1954, at Mr. Mansfield's home at 5210 Blackstone Avenue, in Chicago. Mr. Elliott Fullman, Irving Mansfield and I were present. The meeting was a series of conferences between Mr. Mansfield, El-
liott Fullman and myself. The first conversation at
344 this meeting took place at approximately 1:00 o'clock.

I said to Mr. Mansfield "I understand that you have been talking with Elliott Fullman about making more money out of this City Messenger Air Express operation in the Chicago area." His reply was, "I have got to make more money, as there is too much work connected with this operation to make anything on pickup and delivery." I said, "Under the present arrangement, under the present agency arrangement that we have, that is all you can participate in financially, is the pickup and delivery. To participate to a greater degree you would have to make

some type of investment in City Messenger of Hollywood." He responded, "I have talked to Elliott about
345 this. However, I am not interested in investing in City Messenger of Hollywood; I am only interested in investing in City Messenger Air Express." I replied, "That is impossible, because City Messenger Air Express is just an assumed name for City Messenger of Hollywood. The permits, the air freight forwarding permits are issued to City Messenger of Hollywood, and are not transferable. If arrangements relative to investment in City Messenger Air Express were contemplated, it would actually entail the necessity of filing for a new permit, which I don't think we could get, under City Messenger Air Express." There were no concrete offers made of any moneys for participation in the operation known as City Messenger Air Express on the part of the de-
346 fendant Irving Mansfield. I definitely did not tell him at any time that he was to be part owner of such air freight forwarding business. The type of operation that we had May, 1954, is the same as the operation today.

347 I have seen Plaintiff's Exhibit 17. I saw it the first time at the home of Miss Rose Siegal on or about February 1, 1955. The exhibit which purports to be a filler and on its frontpiece has "City Bonded Messenger & Trucking Service" was being distributed in the City of Chicago during the year 1955. The first time it was distributed was in March of 1955. I received or I obtained a copy of that which came through the mail to a telephone answering service I subscribed to in the Chicago area,
348 the Arrow Telephone Service. They had sent one to that particular address. The plaintiff corporation authorized the defendant corporation to affix the words "City Messenger Air Express" to its circulars. The corporation did rescind such authority. Such rescinding of authority was made January 10, 1955. It is the same

day that the plaintiff corporation and the defendant corporation terminated their association.

352 Plaintiff's Exhibit 17 received in evidence.

356 ELIAS MANSFIELD, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Mullin.

My name is Elias Mansfield and I live in Los An-
357 geles, California. I am an attorney at law and a certified public accountant. I was admitted to practice before the bar of the State of California since 1928. Irving Mansfield is my brother and his wife is my sister-in-law. In July 1954 I received a telephone call from Irving Mansfield in Chicago. On August 21st or 22nd of 1954,
358 I had a luncheon meeting with Ben Fullman and his attorney, a Mr. Rose, in Los Angeles. I had a tele-
359 phone conversation with Mr. Fullman arranging this luncheon meeting and for the purpose of discussing a situation involving my brother and a possible interest in the air freight business, and, when we met that day, for luncheon, in discussing the matter between myself, Mr. Fullman and his attorney, Mr. Rose, Mr. Fullman first said to me, "I have been talking to your brother, Irving about a possible merger between our two companies." I said to Mr. Fullman, "Do you have a financial statement of your company?" Mr. Fullman said, "No, I do not have a statement with me, and; furthermore, it would be of no use to give you a financial statement because our net worth is only very nominal. We have practically no equipment. Our equipment is mostly leased and it would be of no benefit to you to have a financial statement." I said to Mr. Fullman and Mr. Rose, "Well, under those circumstances, so far as a merger is concerned

and as far as my advice to my brother, it is definitely out. There would be no point in my brother putting in
360 his company with his net worth in a merger with Mr. Fullman's company where the net worth was only nominal and I am definitely opposed to it and I will so advise my brother." Then we discussed other alternatives and I suggested, "Well, what about a new corporation, an entirely new corporation between you, Mr. Fullman, and my brother." Mr. Fullman replied that that would not be practical because the C.A.B. certificate which he had for the air freight forwarding business is not transferable. Then we dropped that and I made a further statement that under the proper circumstances my brother could pay into the then existing corporation an amount equivalent to what he valued his business, including the C.A.B. certificate. Then we talked about the value of the C.A.B. certificate and Mr. Fullman said, "Well, it cost me about $12,000 or $12,500 cash in fees and traveling expenses," and that Irving should put up an equivalent amount. Then we had some further general discussion and we con-
361 cluded, among all of us, that the next step would be to contact my brother and suggest to him that he come to Los Angeles and wind up the details. Mr. Fullman then said, "Well, that is a good idea. We will do that." I told Mr. Fullman that I would immediately write my brother about our meeting and tell him what had transpired and suggest that he come to Los Angeles. Then Mr. Fullman said, "Well, I talk to your brother every so often. The next time I talk to him, I will tell him that you are going to write him and that we both feel that it would be well if you came to Los Angeles." That was the end of that meeting.

362 A few days after our meeting, Mr. Fullman telephoned me at my office and told me that he had talked to my brother Irving since our meeting and had told him

in general terms what we had said and done, and that Irving said that he was going to come to Los Angeles around Labor Day. Then Mr. Fullman said to me that he would do anything in the world to get my brother interested in the air freight business, because he thought
363 my brother was one of the best go-getters he ever saw and knew more about the transpertation business than anyone else, and he would do most anything to get him interested.

I believe it was shortly after Labor Day in 1954 that my brother came to Los Angeles, and during his stay in Los Angeles he and I went over to Ben Fullman's office at 1414 Cole Place in Los Angeles, and discussed the situation further. Mr. Fullman again mentioned something about a possible merger between the two companies and my brother told him that that was definitely out and that he would not consider it at all. Then we discussed the possibility of a new corporation and Mr. Fullman said again that he thought that was not practical because the
364 C.A.B. certificate was not transferable. We then discussed the third alternative, that my brother put into the City Messenger of Hollywood, Incorporated, an amount equivalent to the value of the C.A.B. certificate, then we had some discussion as to the value. Mr. Fullman said that it cost him about $12,500 to get the certificate, and my brother said, "I will put in twelve thousand five hundred cash." Mr. Fullman said, "That will be all right." My brother then said, "Well, you and Al (meaning me) work out any further details necessary, and let me know when you are ready for the money, and I will send the $12,500, or send it to my brother." The con-
365 versation ended then, and my brother and I left. Irving Mansfield was to receive for the $12,500, 50 per

cent of the outstanding shares of the company. Thereafter, I had several telephone calls from my brother in Chicago, inquiring what progress was being made, and I in turn called Ben Fullman several times to find out what we were going to do and when we would be able to consummate the transaction. Nothing further happened. Then in the latter part of December my brother Irving came to Los Angeles from Chicago either to wind up the deal or the deal was entirely out. He came to Los Angeles on the 28th or 29th of December, or thereabout, and he and I went over to Mr. Fullman's office on Cole Avenue in
366 Los Angeles. My brother told him that he came for the express purpose of either consummating this deal, or else the deal was off entirely. Ben Fullman then said that since we had discussed this deal, his sons objected to it. He had a tape recording of telephone conversations he had had with his sons, one of whom was in New York and one possibly in Chicago. It was quite evident from their telephone conversations that the sons were opposed to the transaction, and so my brother said, "Well, that is the end of that," and we left.

Mr. Fullman played the tape recordings of the telephone conversation in our presence and we listened to
367 them. I believe that one of the objections given by Fullman's sons was that they did not think that Irving's putting up $12,500 was enough. From what I heard on the tape recording, both of the sons were of the same tenor. One said practically the same as the other.

I don't remember which was which, but both boys had
368 the same reasons. Another reason given by the sons was that they were unwilling to give Irving under any circumstances one half of the shares of the business. They said that there were four or five of them and Irving
369 was one and they did not want him to have one half

of the shares. My brother and I said, "Well, I guess that is it," and we left. Thereafter, I had no further conversation with the Fullmans.

370 I picked up Defendants' Exhibit 11 at the office of the Clerk of the District Court of the United States at Los Angeles, California.

Defendants' Exhibit 11 received in evidence.

Witness continues: I checked the bankruptcy records at the time that I obtained the photostatic copy of 371 the debtor's petition. The debtor was discharged in bankruptcy in 1952.

375 It was agreed by counsel that Modern Delivery Service, Inc., was discharged in bankruptcy on January 9, 1952.

Cross Examination by Mr. Cohen.

The meeting of August 22, 1954, the luncheon meeting, where I and Ben Fullman and his attorney were present, was a meeting to find some way to get together. There was no agreement to get together at that point. At the August meeting, there was no agreement that they get together.

At the meeting occurring in September 1954, Ben Fullman did not say to me that he would have to confer 376 with the other officers of the City Messenger of Hollywood corporation. I am familiar with corporations and how they deal, how they work.

377 *Redirect Examination by Mr. Mullin.*

There was no kind of an agreement until the September meeting when my brother came here.

378 ROBERT M. YOUNG, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

379 *Direct Examination by Mr. Cohen.*

My name is Robert M. Young. I live in Chicago, Illinois. I am sales manager for Modern Teleservice, Inc. In 1954, I was employed by the predecessor to this company then known as Modern Talking Picture Service. The company has three offices, New York, Chicago and Los Angeles. In 1954, I was employed in both the New York and Los Angeles offices. From June to December of
380 1954, I was employed in the Los Angeles office. In my position I had occasion to use, in Los Angeles, City Messenger Air Express for the company by which I was employed. On December 15, 1954, I was transferred to our Chicago office. I was then salesman and assistant office manager. At that time, I had occasion to use City Messenger Air Express for expediting air shipments
381 primarily from our offices to television stations on a national basis. We have used City Messenger Air Express Service in Chicago up until this date. We used City Messenger Air Express in January and Febru-
382 ary 1955. In the latter part of February 1955, we encountered a number of shipments placed with City Messenger that had not arrived at their destination and, on that occasion, I contacted Sidney Fullman of City Messenger, Los Angeles office, in order to determine what had happened to the shipments and if there was anything that could be done to correct the situation. We continued to use City Messenger Air Express.

383 I have seen plaintiff's Exhibit 18, the receipt book. I have seen quite a few of them. This book was provided to us by City Bonded Messenger for making out

way bills on pick up receipts for shipments originated by our office.

387 In February 1955, we were dealing with both the plaintiff City Messenger Air Express and the defend-
388 ant City Bonded Messenger & Trucking Service. In February 1955, we made phone calls for the forward-
389 ing of packages by air express. City Bonded Messenger came to our place of business to pick up packages. Their messengers had badges on their hats and, I believe in some cases, wore something on their jackets identifying them as City Bonded. In January and February 1955, I called for City Messenger air shipments.
390 When I called, I always talked with a Mrs. Mansfield. I said, "This is Mr. Young of Modern Talking Pictures calling." I called for air pickup. In December 1954, *I did not make any calls from the Chicago offices.* During the month of February 1955, some air shipments were delivered late. I would, on occasions, when I was in our shipping department, see City Bonded messengers picking up film.

Cross Examination by Mr. Mullin.

I do not know how long our company had been doing business with City Bonded Messenger & Trucking
392 Service Inc. I do not know whether our company was doing business with City Bonded Messenger & Trucking Service, Inc. before May 1954. I was transferred from the Los Angeles office to Chicago on December 15th, 1954, and checked into our office here and immediately went on vacation and did not return to the office until two days after New Year's day, or the second or third of January, at which time I was actively engaged in the Chicago office. At that time we were dealing, besides the two that
393 are involved in this law suit, with the Air Express Division of the Railway Express Company. They

394 handle many shipments for us and they are on a regular pick-up basis. In other words, they make any number of pick-ups a day at our offices. We also have air shipments that are not handled by the parties involved, but are handled by messengers who pick up at our place of business, deliver to the air port, and turn it over to the air carrier. The shipment is then made in that way.

395 WILLIAM C. SCHELLI, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

396 *Direct Examination by Mr. Cohen.*

My name is William C. Schelli and I reside in the City of Chicago. I own and operate a motor carrier operation, namely, the City Transit Line. It is located at 833 West 36th Street. It is a sole proprietorship. I am the owner of that company and I have owned it since 1937 continuously. We stopped operating from the beginning of the war until the end. After the war, we reopened and started operating again. We operate in and about the Chicago area. We have Interstate Commerce authority for the Chicago commercial zone. We have Indiana rights in Lake County, and we have Illinois and intrastate certificates covering the State of Illinois. Prior to the war, the name of my company was still the City Transit
398 Line. We rendered a feeder service to truck, rail and air. We also render special services. We rendered one special service from Chicago to Baltimore, Maryland, and return, and we also rendered special services which was a night service to the air port from the Calumet area in Indiana. We also rendered special delivery services. We were in all types of operations as a local carrier. We also

carry goods, wares and merchandise from the shipper to the air port and there turn it over to an air line. I know of my own knowledge that there are other firms in the City of Chicago operating with the name of
399 "City" in its title. There are City Cartage Company, City Express, and City Bonded. I have been in the
401 transportation business since 1927. I worked in all phases of operations in that industry.

I have never been notified by City Bonded Messenger & Trucking Service that I was infringing upon their name.

403 *Cross Examination by Mr. Mullin.*

I did not operate during the war years. I started in 1937. We then had four trailers, three tractors and one straight truck. In our business, we put the specials on
404 a small truck and made the specials. We made special delivery, but never as small as an envelope. I was never engaged in the messenger business. As to whether I have ever been in competition with City Bonded Messenger & Trucking Service, when you say, "trucking",
405 I could very easily be a competitor. I could be in competition with them. I can't say for sure whether I was in competition.

406 During the war, we closed down for the war effort. We closed down 10 days after Pearl Harbor, December 7, 1941, until 10 days after the close of the war in
407 1945. I sold the trucks and trailers to another company. In 1941, I was 31 years old. I had accounts receivable. We collected them and everything was paid off. We sold pieces here and pieces there, not all to
408 the same company. We started up again in August 1945. We bought trucks and trailers one by one. It was not a new business. We still had our original certifi-
409 cate. No one else was engaged with me in this busi-

ness. It is an individual company. The feeder service that I have is a service that is rendered to either rail, truck or air lines on a through rate basis. When we were not being operated there, we would charge our local delivery from Gary, Hammond or East Chicago to the air port, but on the motor carrier we are operated on all through rates throughout the United States, and even though they have their I.C.C. authority they do not use it, and we pick up from them, or, vice versa, pick it up and deliver to them. We are a part of the service that a
410 railroad renders to its customers.

Before the war, I had four trucks and trailers and one straight truck. I don't recall the volume of my
411 business in 1940 or 1941. My volume of business in 1955 was $84,653. Our business is 50 per cent feeder business and 50 per cent local service and special services for [redacted] customers in Indiana and Chicago. The special services comprise in picking up 50, 100 and 500 pounds, 1000 pounds, depending on the size of the order, and making a special delivery out of it. I deliver them to various parts of Chicago or into Indiana, Gary, Hammond, East Chicago, Indiana Harbor, Whiting, or vice versa. We have no minimum weight that we pick up, but we have a minimum rate that we charge regardless of weight. Our
412 charge is no lower than $3.00 for a delivery. I got my certificate of convenience and necessity at the end of 1937 or early 1938. I did not get it under the grandfather clause. We filed for a certificate of convenience and necessity at a joint board hearing in Chicago, at an Interstate Commerce hearing. The grandfather clause ended in April 1935, and I filed in 1937. On April 1,
413 1935, the tariff became effective.

414 I operate in the Loop. Depending upon size, trailers can travel in the Loop. If not, we have to get a

special permit to operate inside the Loop, which we do, when we have to. I do advertising. We advertise throughout the Chicago Transporting Club. That is the biggest part of our activity, which is made up of about 2,000 members, all belonging to air, rail, freight, water, industrials, and that, I think, is the best form of advertising. We now have 10 trailers, 5 tractors, and one straight truck.

I know of the City Bonded Messenger & Trucking
415 Service Inc. but I can't say how long. I have seen them around and I have seen their trucks but I can't tell you when.

At present I have 10 employees.

I have met the officers of City Messenger Hollywood Inc. doing business as City Messenger Air Express just
416 the other day, this week. I was called and I was asked how long I was in business and if I had any interference with our name City Transit, with any other company. I told him, so far as I was concerned, we didn't have too much interference because of the amount of advertising and people that I knew throughout the City in the transportation business that it wouldn't interfere as much. I belonged to these clubs so long that my name is practically around the city and I know all the truckers and everybody else, so, naturally, when the name comes up, they refer to me. They know me personally. They
417 know my name, which is William C. Schelli.

As far as City Bonded Messenger & Trucking Service is concerned, my business is different as to the messenger part, but when you say, "trucking", we are
418 in trucking and it could be duplicated. We do any type of trucking.

419 I have no financial arrangement whatsoever with the plaintiff in this case. I have not done any business

with the plaintiff, because we have been doing business with the regular air lines. We do hardly any business at all with freight forwarders at the present. We do no business with messenger service. A few times I received calls for messenger service and told them to call somebody who specializes in the package, envelope and messenger service business.

420 SIDNEY B. FULLMAN, called as a witness herein on behalf of the plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination by Mr. Mullin.

421 Our ticket service was a pickup and delivery of theater service, sporting events tickets, spectator tickets, various types of entertainment tickets, picking them up and purchasing them for theater goers at the box office and delivering them to their residences and getting paid a fee for performing that service. This was a messenger service and we found it somewhat acceptable to the business. The customers requested that we pick up tickets at a specific theater and we would pick them up for them at the theater, and deliver the tickets to them. We would advance the money and then collect it. These theaters
422 were located in Los Angeles, California, anywhere in Los Angeles, California. Some of them were located in the downtown district.

I testified that on April 29, 1947, we purchased a customer list from Modern Delivery Service and the right to use the name City Messenger and its mark in the Hollywood area, and in such areas where it would not compete with Modern Delivery Service's downtown operations. I don't consider this competing with Modern Delivery Serv-

ice in the downtown operation. It is not a fact that
423 this ad was the Modern Delivery Service ad.

424 I was born in Los Angeles, California, and I resided there for some time. The 441 square miles of Los Angeles is pretty difficult to get completely familiar with. I think it is the largest city area in the United States. I am familiar with it as any citizen can become familiar.

Hollywood was incorporated into the city of Los An-
425 geles in 1909. The city of Los Angeles surrounds it.

Hollywood is within the city limits. Being a member of the Hollywood Chamber of Commerce, I would say that Hollywood encompasses any particular territory where
426 Hollywood's influence is felt. I have seen Hollywood
427 defined in the Hall of Records, City of Los Angeles.

Where I saw it defined it did not include what is now downtown Los Angeles. Downtown Los Angeles has been increased in area. Hollywood was not a part of Los Angeles downtown on June 9, 1947.

I testified that I paid $2,547, in installments for the customer list, name, etc. I paid it to Modern Delivery
428 Service, Inc. Benjamin Fullman was the president.

It was paid by check. I do not have those cancelled checks. I do not have them available. I have a personal file but these were partnership checks. In that
429 personal file I retained a partnership tax return.

There are records of this transaction and of these payments in the books of Fullman & Chess. There are vouchers. I wouldn't know at this particular time whether they are available to me. I really don't know where
430 they are. No one specifically requested them.

I signed the complaint which was filed by City Mes-
431 senger of Hollywood, Inc. Plaintiff's Exhibit 17 is one of the instruments on which the allegation is based. It is also based on other instruments, advertisements in

the classified directory published by The Reuben Don-
432 nelley Corporation for the Illinois Bell Telephone Company, messenger receipt books for the City Bonded Messenger & Trucking Service to their customers. They were distributed subsequent to January 10, 1955. In the exhibit I think it shows exactly what was said, but I took that information from the exhibits that were pre-
433 sented to me at the time. This is one of the instru-
434 ments. It is right here, City Messenger National Credit Card. This is specifically mentioned in the allegation. Anyway, this is one of the instruments on which the allegation was based. They advertised City Messenger National Credit Card as most convenient for charging messenger service at City Messenger offices, whether New York, Hollywood, Beverly Hills, or Los Angeles. That is what it refers to. That is specifically in this allega-
435 tion. There were other documents upon which these
436 allegations were based. The chart rate folder, plain-
537 tiff's Exhibit 17, was not authorized by me to be printed by the defendant. It was not, to my knowledge, authorized by City Messenger of Hollywood, Inc., doing business as City Messenger Air Express. This to me is a rate chart, not a circular. A circular, to my way of think-
438 ing, is merely a holding out to the public of the performance of an offer. It is a type of an offer to perform a certain type of service and it is not a specific type of rate memorandum, which this is. This to me is a rate memorandum; this is not a circular. In our particular busines, we try to keep that very specific.

439 I cannot say whether Defendants' Exhibit 3, which is a letter from Irving Mansfield to "Dear Ben", dated July 1st, and mentions "our new rate chart", refers to this particular item. At that time I was in New York City. I wouldn't know whether Defendants' Exhibit 4,

dated July 8, 1954, evidently in reply to this letter of July 1st, which reads "Your brochure is very clever", refers to this. I was in New York at the time.

At the time that Modern Delivery Service was bank-
440 rupt, they owed me money. I can't recall the exact sum. It was in the thousands. They had owed me money approximately 6 months, for personal loans that I made to the Modern Delivery Service to support their
441 business. I made the loans after I left them. I never had an opportunity to offset against those loans the $2547 that I paid them.

I picked up Plaintiff's Exhibit 17 in the home of Rose Siegal in Chicago up on Margate Terrace. I was staying with her at that time and she worked for Mansfield. I saw another copy of it in my telephone answering service. She got a copy. She received it in the mail and showed it to me. I can't fix the date that she re-
442 ceived it. I saw it, and she showed it to me.

As to Defendants' Exhibit 12, I have never seen these particular colored ones. I don't recall these at all. I have a red one or green one. There appears on there the information I complained of in the complaint. It is the
443 mark on here. Another particular is "A better standard of messenger service". That was borrowed from a particular advertisement that we placed in New
444 York. That is contained in the allegations of 13-c.

[February 21, 1957]

446 Witness continues: In 1951 we did not maintain an
447 office in Chicago. We performed a special service in the Chicago area in connection with our Los Angeles operation. Pick up and delivery was ordered by a client, inviting us to perform these segmental services in the area. For instance, if they were shipping something to Los An-
448 geles and they wanted us to pick up and deliver it in Los Angeles, they would call us by long distance

phone, which was usually in connection with a convention or a travelling account executive. The pick up and delivery was normally performed at a railroad station or airline depot in Los Angeles. We didn't perform any pick up or delivery ourselves in the Chicago area. The same situation applied in 1953 and in 1952. The first time we performed any pick up and delivery service in the Chicago area was sometime after May 22, 1954. Since May 22,
449 1954, we have been engaged in pick up and delivery service here in Chicago. We are in air freight forwarding business in the Chicago area. Pick up and
450 delivery is an incidental service to our air freight forwarding. We pick up at the shipper's store door. We also deliver to the store door. The inter-city movement is by air and the delivery to his store door or pick up from his store door to the air freight terminal of the airlines is normally performed by surface transportation. A messenger service could perform that transportation depending upon the type of equipment he maintains. Some of the messenger services perform that type of ground operation of air freight forwarding. The City Bonded Messenger
451 & Trucking Service performs for us the ground operation for air freight forwarders. They have performed it for us and for others. I believe at the present time they perform it for the Hop Air Freight Company. They are freight forwarders. I have heard of Emery Air Freight Forwarding Service. In dollar volume Emery Air Freight Forwarding Service are larger than we. I don't
452 know whether City Bonded Messenger performs any services for ground operations of air freight forwarding for Emery Air Freight Forwarders. The ground operations of air freight forwarding when performed by a messenger service requires the filing of a contract
454 with the Civil Aeronautics Board. It requires appriz-

ing the Civil Aeronautics Board by the parties, by either appearance by both parties before the Civil Aeronautics Board and explaining the existence of the contract or a written agreement outlining the charges that they will make for the best performance of the services.

I testified that we had some 350 agents. These agents perform the ground operations of air freight forwarding for us in these various cities. We have a contract with each other. We have filed a blanket contract listing
455 the agents in that contract. We have listed all the
456 350. I have no copy of the written contract. We filed it. It is on file.

Since January 1955 we have not engaged in the
457 messenger service in the Chicago area. We don't contemplate operating under the name of City Messenger as a messenger.

458 I recognize Defendants' Exhibit 13. That is an application made in the name of City Messenger of Holly-
459 wood, Inc., doing business as City Messenger Air Express. The Civil Aeronautics Board letter of authority that we have permits us to engage in ground operations incidental to air freight forwarding, as a part of a through air freight movement. If a portion must move by air it is constituted under the authorization of the Civil Aeronautics Board if a through bill has been issued. It did not give us authority to operate as a surface common carrier, but it does as a common carrier in a forwarding operation. We have applied for general trucking
460 rights in the Illinois area, not messenger rights. By general trucking rights I mean as listed in the application, general commodities. That would permit us to pick up an envelope and deliver it from one place to another.

463 An air freight forwarder issues a through bill and and is responsible for the shipment from the consign-

or's door to the consignee's door. If a package is lost or damaged the consignor or consignee have a claim against the air freight forwarder. We are required to maintain adequate insurance coverage to assume that the claim
464 will be properly handled and that, with due diligence, it will be paid. The Civil Aeronautics Board will not issue a letter of authority except to a financially responsible applicant.

466 A tax lien was possibly filed against the City Messenger of Hollywood, a corporation, located at 1414 Cole Place, Hollywood, 28, California. I have never seen Defendants' Exhibit 14, which is a notice of a federal
467 tax lien. If there were a tax lien filed, I as president would know about it.

A tax lien was filed against our company last fall, but I don't recall the exact date.

468 I met Irving Mansfield once, I think, in 1949. It was for about five minutes and I didn't see him again until July 4, 1954.

I have an uncle by the name of Dave Siegal. I don't
469 know where he resided in 1932. I was pretty young at the time.

471 Defendants' Exhibit 13 received in evidence.

472 Witness continues: In 1932 I was approximately 9 years old. In 1932 Dave Siegal probably came to our house. Irving Mansfield might have come to our home with Dave Siegal from time to time, but I don't spe-
473 cifically recall the instance. I remember living in
475 Chicago with my father. I don't think that I knew that my father had at that time a business associate by the name of Irving Mansfield. I was attending junior high school then and I wasn't too much concerned with business. My first experience as a messenger was in 1938, when I worked for my father in Los Angeles.

I did not purchase any assets of the Modern Delivery Service from the trustee in bankruptcy.

476 *Redirect Examination by Mr. Cohen.*

The tax lien was removed approximately 24 hours after it was made known to us. I don't know the circumstances under which the lien was filed, but it was the policy of the company that whenever those things became known to us it would be settled immediately, and if there was any protest at all, we should pay first and protest later.

City Messenger of Hollywood, doing business as City Messenger Air Express, does not operate a messenger
477 service in the City of Chicago. It does pick up and delivery in the City of Chicago only in connection with its air freight forwarding activities. It does not do that in connection with any other activity.

I know under what circumstances and conditions the application (Defendants' Exhibit 13) was filed. Fre-
478 quently, in the air freight forwarding business, we are called upon to act for a shipper in accordance with the Civil Aeronautics Board regulations as an agent of the shipper, to avail the shipper of the most economical and expeditious form of service where our particular tariff on file may not particularly cover that service, and the direct air carrier tariff may, we are asked to act as the shipper's agent. The Illinois Commerce Commission is not too clear on that point of jurisdiction, so they have requested us to file for a permit actually to prevent any complications to arise from those activities. We received this request from the Illinois Commerce Commission on a complaint from Mr. Mansfield that we were indulging in a trucking business without a permit in
479 the City of Chicago. We employed an attorney to represent us before the Board. The attorney's name was Alfred L. Roth.

480 *Recross Examination by Mr. Mullin.*

The amount of the tax lien was $4,964.76. We have a release of lien from the United States Government.

I am familiar with the Chicago Classified Direc-
481 tory. We are listed in the Chicago Classified Directory. We are listed as City Messenger of Hollywood,
482 specifically designating who we are. Page 1230 of the Chicago Classified Telephone Directory, dated December 1956, has the following listing:

"City Messenger of Hollywood, Inc., 845 South Wabash Avenue, Wabash 2-1850" and that appears under the heading "Messenger and Delivery Service".

483 We applied under the Illinois Motor Carrier Property Act on October 31, 1956. This complaint by Irving Mansfield was filed sometime previous to that date. I was apprised of that by our Chicago office through the
484 knowledge of our agent here in Chicago. My office in Chicago told me that Irving Mansfield complained and I told the office to file with the Illinois Commerce Commission if this would clarify the situation. I don't recall the date that I was notified, but I know that it was prior to October 31, 1956, the date that I applied.

485 *Redirect Examination by Mr. Cohen.*

Defendants' Exhibit 13 has a paid stamp and the date of December 6, 1956, thereon. This is the actual date that this instrument was filed with the Commission.

486 City Messenger of Hollywood, Inc., 845 South Wabash Avenue, Wabash 2-1580, is listed under the heading "Messenger and Delivery Service" because the Reuben Donnelley Corporation said that that was the only listing we could have in the book under that particular form of service. They wouldn't list us under "Trucking". They said that that is where we would have to be because, accord-

ing to them, they figured that the name "Messenger" means "messenger", and, also the fact that they have a designation "Delivery" which is included in that. We
487 asked for a listing under "Trucking", but it was not granted.

At page 2147 of the Chicago Classified Directory, dated December 1956, I do not find the name of City Mes-
488 senger of Hollywood listed there, but I find the name of the defendant corporation listed there. The defendant corporation has two listings there, while we have none. At page 52 of the same Directory, the plaintiff corporation has no listing there. The defendant corporation has a listing under "Air Freight" and also an advertise-
489 ment which says "Air Freight, pick up and delivery, day and night service." It has a picture of an airplane and a truck. It says "Randolph 6-6001. Special Delivery service to meet all deadlines for an envelope to a truckload." Then there is a script mark "City Bonded Messenger Service, in business since 1925, Prudential Building, 216 West Hill, 193 North La Salle."

491 *Recross Examination by Mr. Mullin.*

I have heard of the Cannon Ball Bonded Special Delivery Service here in Chicago. I really don't know what type of service they render. I don't believe that they are air freight forwarders. I see their listing under "Air Freight". I have seen that in the book right now, that in Chicago messenger services which engage in pick up and delivery of air freight are listed under "Air Freight." That is the way they have it listed.

493 WALTER HERMAN BREITBARTH, called as a witness herein on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Cohen.

My name is Walter Herman Breitbarth. I reside in the city of Chicago. I run a trucking business. I own my own truck. The name of my company is City Loop
494 Express Company. It is a sole proprietorship. I have owned it now for two years. I drove for 30 years for the man who previously owned it. His name was William J. Ayer. He operated his business under the name of City Loop Express Company. That is the name that I am using now. He retired and he sold the business to me for $1000, the name, the good will, and the permits. I hold a permit from the I.C.C. I have that permit with me here. The typewritten portion
495 of this certificate of public convenience and necessity as common carrier by motor vehicle, bearing number 2255, reads:

> "Shoe machinery, shoe polish, printed matter, chemicals, light cartage and general cartage within 50 miles radius of 915 West Erie Street, Chicago, Illinois, and to transport said property to and from any point outside such authorized area of operation for shipper or shippers within such area."

As a result of that authority, I would say I can carry most anything under "general cartage." I believe I could carry something as small as an envelope. My minimum charge is $2.00. I operate in and about the Loop.

I have not, within the last two years, received any mail or any notification whatsoever from City Bonded Messenger & Trucking Service, Incorporated, or its attorneys, asking me to refrain from using the word "City" in the name of my business.

497 *Cross Examination by Mr. Mullin.*

I will be 59 years of age on March 8th. I have been driving a truck since 1916. It is my understanding that the Certificate of Public Convenience and Necessity tells me what I can do in my business. Therefore, I am governed by what I understand this to be. There was a hearing on this certificate of public convenience, and as a result of it, there was an order entered by the Illinois Commerce Commission and this came out of it.

498 In response to questions asked of me by Mr. Cohen, I read that paragraph which stated what I could do. I said that I thought I could carry an envelope. I have had no call for carrying envelopes. I don't do messenger service but I feel that under the term "general cartage", I can carry most anything. Paragraph 6 of the Certificate reads:

> "No. 6: That the Commission finds that the term 'general cartage' as contained in such certificate of
> 499 public convenience and necessity, is not a commodity description, but rather is service description and that it does not increase the categories of commodities specifically mentioned in said certificate."

I presume that to tell me that I can't carry anything more than the specific things that I said and that general cartage merely is a designation of the kind of service I am engaged in with respect to these particular commodities. I have had this certificate for two years, and I have been carrying shoe machinery, shoe polish and chemicals. I decided that I wanted to carry brooms during the time that this was going on. I felt that it would be neces-
500 sary to get permission specifically to carry brooms.

I asked the Commission to put in a special paragraph. Accordingly to that, my business is very specific. I serve the broom business, the shoe machinery business. I haul wax for shoe polish companies. I haul stationery—

printed matter—in cartons of about 100 pounds. I
502 do not carry any drawings or things like that for advertising companies. I do not carry any boxes of jewelry or anything of that kind. I do not pick up small packages and run them across town. For my customers, I have carried commodities outside of my certificate of public convenience and necessity.

503 I stated that I purchased this business from Ayer and I paid him $1000, for which I got two trucks, the name of the business, the good will, and the permits. There were two employees, my son and myself. My son is no longer in the business. I have another driver working for me by the name of Dick Merz. I do not pick up any air line or railroad tickets for my customers. I
504 do not pick up any merchandise which is in air freight commerce and carry it to the air port as part of my service.

I understand that in this case the name "City" is involved and I want to protect my name "City". Mr. Cohen, I believe, is today my attorney. When the subject came up, I was notified by him about this and I have appeared here voluntarily with this information. At the time
505 he called me, he was not my attorney. He said to me on the telephone that the name "City" in my name City Loop was in jeopardy. He suggested that I appear here as to the extent and length of time that we have had this name. I first appeared here this morning.

506 I do not know Irving Mansfield. I do not know who City Bonded Messenger is except that I just
507 heard of their name. City Bonded Messenger Service never conflicted with my business so I never paid any attention to it.

ALFRED ROTH, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Cohen.

My name is Alfred L. Roth and I reside at 5654
508 North Bernard, Chicago. I am an attorney. I practice in the State of Illinois. I have been an attorney since
511 1938. My work primarily deals with the motor carrier industry, both from the Federal standpoint, the Interstate Commerce Commission, and from the State standpoint, it is the Illinois Commerce Commission. I have been practicing before the Interstate Commerce Commission since 1953, the inception of the new Motor Carrier Act. I have a membership card issued by the Interstate Commerce Commission. I am a member of the Practitioners Association. I have been admitted under the Interstate Commerce Commission Act. I am
512 general traffic manager of Shippers Dispatching, Incorporated, a motor carrier operating through the middle west. I have been such general traffic manager since 1938. I handle their matters before the Interstate Commerce Commission, their rate matters, their claims, and any other legal matters that they have within the State of Illinois. I also represent Knaus Truck Lines, a common carrier operating through the western territory; Babcock Brothers Motor Service; Freeman Cartage Company; Cortland Cartage Company, Inc. I represent the plaintiff corporation before the Illinois Commerce
513 Commission. I filed an application for the plaintiff as a common carrier to operate within the State of Illinois in a 50 mile radius of the two air ports of Chicago, to handle general commodities in a supplemental service as an air freight forwarder, that is, to make the delivery or pickup from the air lines at the air port.

514 Defendants' Exhibit 13 is a copy of the application I filed on behalf of the plaintiff corporation. Any carrier operating on the state highways in Illinois must have either a certificate of registration as an interstate carrier or he must have a cetificate as a common carrier providing the service he performs is in conjunction with the freight forwarding business. The Act in the State of Illinois provides for the registration of the motor carriers and the railroads in conjunction with the pick up and delivery service; but it does not provide for a freight forwarder to register for a certificate of authority. Consequently, they must secure their authority from the State.

The plaintiff corporation filed such an application up-
515 on my recommendation. A complaint is pending before the Illinois Commerce Commission filed either by Irving Mansfield or City Bonded Messenger & Trucking Service. We had an initial hearing on that complaint about 3 weeks ago. I believe the complaint was filed subsequent to the filing of the application which is Defendants' Exhibit 13.

Cross Examination by Mr. Mullin.

516 I know when I filed the application, but I don't recall when the complaint was filed. I appeared to answer the complaint. I thought it was filed after the application.

I know there are other air freight forwarders, but I do not know whether they filed applications of the same type as I have here. My filing was for general commodities within a radius of 50 miles from the two air ports, and I described the addresses of the two air ports. The service was to be rendered as incidental to the air
517 freight forwarding. The application says "General commodities except commodities in bulk and those commodities which require special equipment" and I named

the air ports of Chicago, which would indicate, beyond a doubt, that it was in connection with air freight. They have no other reason for being at the air port. There
518 is no provision in the application which requires that information. That would be submitted at the hearing. The evidence submitted would then indicate that the rights would be limited to traffic which would originate outside the state or traffic destined outside the state, so the service rendered would be in conjunction with air freight only. In those cases where bus service would be required due to bad climatic conditions, in other words, if shipper A in Toledo, Ohio, had a shipment destined for Chicago, Illinois, and he couldn't use the air lines because of bad climatic conditions, he would use a bus to whatever point he could, and they would pick it up at that point and
519 deliver it to wherever it went. It would still be supplemental service, and the traffic would still originate outside the state. My application requests that anything connected with air freight or air port could be handled by us. I am familiar with the defendant City Bonded Messenger & Trucking Service only to the extent of the testimony that was brought out. I walk down LaSalle Street and see their sign on the door.

* * *

524 Thereupon the plaintiff rested its case.

* * *

534 By Mr. Mullin: A motion to dismiss out as defendants Nadine Mansfield and Irving Mansfield. The testimony has shown they were only acting within the scope of their positions as officers and employees of the City Bonded Messenger & Trucking Service.

* * *

By the Court: I have not heard a word as to Nadine. I don't see any reason for keeping her.

By Mr. Cohen: I think the Court is correct.

By the Court: What are the names?

535 By Mr. Mullin: Nadine Mansfield and Irving Mansfield.

By the Court: Motion of the defendants granted as to them.

By Mr. Cohen: I can only say as to Nadine.

By the Court: I think as far as the evidence shows, Mr. Mansfield was acting for his corporation. The motion will be granted.

[February 27, 1957]

537 RUBIE MYLO GILBERT, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Cohen.

538 My full name is Rubie Mylo Gilbert. I reside at Burbank, California. I am a certified public accountant. I practice in New York and California. I am self-employed. Some of my clients in the air business are Dependable Air Lines, North Star Air Coach, SSW Incorporated, Viking Air Lines, Standard Air Lines,

539 Robbin Air Lines. I am retained by City Messenger Air Express. I audit their books and records, prepare their financial statements and prepare their tax returns, and give them the benefit of my advice, analysis and conclusions based on their operations. I have been in my profession 21 years. I first started to work for

540 City Messenger Air Express about two years ago. Prior to that time I did not have any associations with the principals of that corporation. Some of the books and records of the City Messenger Air Express are

541 in my briefcase and the others are at the different offices of City Messenger. The last time I examined the books and records of City Messenger Air Express was this past week-end. I prepared the financial statement

and audited the fiscal year ended January 31, 1957. The amount of income derived from sales of air freight originating from Chicago in the year 1955 was approximately $6500.00. The amount of sales derived from the Chicago office during the year 1956 was approximately $18,000 and some odd dollars. The books and records of the company reflect the cost of operating the Chicago office. The figures that the books and records reflect are approximately $6100.00 a month, not including air express carrier charges and surface carriers. The amount spent in the Chicago area for advertising amounts to about $300.00 per month. There are two salesmen employed in the Chicago area out of the Chicago office. Three are employed in New York and two in Los Angeles. The gross sale as reflected by the company's books for the office here in Chicago for the year 1956 is approximately $18,800.00. The amount of sales originating in Chicago during December, 1955 was $666.00 and in January, 1956 it was about $1200.00. I have seen the original of Plaintiff's Exhibit 20. This exhibit purports to be a copy of the original Federal tax lien for withholding taxes and transportation taxes. The lien is recorded for alleged non-payment of Social Security taxes and transportation taxes for the first quarter of 1956. That exhibit is a certificate of discharge of taxes. The release was secured because the taxes were paid.

Plaintiff's Exhibit 20 received in evidence.

Cross Examination by Mr. Mullin.

The books of the plaintiff company, from which I gathered these figures, are under my control. They are located in Chicago at 845 South Wabash; Los Angeles, 1414 Cole Place; New York, 203 East 36th. The

bookkeeping is done in Los Angeles. The invoices and
553 bills are forwarded to Los Angeles. The billing physically is done in Los Angeles, and those sales which generate from Chicago will have a Chicago address
554 on the invoice but will be mailed from Los Angeles. They are paid generally in Chicago. There are two salesmen in Chicago. There has been a turnover of salesmen. In other words, there would be more than two, numerically, but not more than two at any one time.
555 This is my first appearance in Chicago. I have never met the Chicago salesmen. I have just seen names on the payroll data. I paid no attention to the names because they were meaningless to me. They are names I don't even know.

The billing in December, 1955, was done from Los Angeles, but they still have the Chicago address. Sometime previously they were experimenting with whether it would be more feasible to bill from the office where the sale generated or whether it would be better to bill from a central location in either Los Angeles or New York, and all
556 three were tried. Currently it is all being done in Los Angeles. It has been done in Los Angeles for about a year, that would bring it back to February, 1956. Prior to that, it was sometimes billed in Los Angeles, sometimes in New York and sometimes in Chicago, where the sale originated. I examined these books. I am familiar with the billings and so forth. I couldn't honestly say
557 whether or not the billing was never done in Chicago because the sales were so small. Experiments were made in billing at least over a year ago, over a six
558 or seven month period. I was in charge of the books and records from which the billings were made during this experimental time in Chicago. The head bookkeeper in Los Angeles is responsible to me. The bookkeepers in the branch offices are responsible to the head bookkeeper

in Los Angeles, who, in turn, is responsbile to me, which makes me responsible down the line. These books and records from which the billings were made were in my actual possession because all copies of invoices were sent to Los Angeles. At all times during the year 1955,
559 the books and records from the Chicago office were in
560 my charge. Revenues represent charges for air freight handling. We have one overall tariff. In other words, the Civil Aeronautics Board approves our tariff and that is what we charge our customer. We, in turn, have to pay to the carrier the carrier's charges in accordance with its tariff. The $660.00 gross revenues during the month of December, 1955, represents the total amount which we received and out of that we paid the air line carriers and all the other expenses involved. The same applies for the total from Chicago in 1955, the $6500.00
561 for the whole year. About $1400.00 or $1500.00 was paid to the air lines as carrier charges. In addition to that there were surface carriers that had to be paid.
562 About $600.00 was paid to the surface carriers. $300.00 per month was paid for advertising. That was only in the Chicago portion. That includes making up advertising matter, printing that is mailed out to prospec-
563 tive customers. We employed printing paraphernalia for advertising which is represented by this $300.00.
564 That was fliers and booklets—not a book in the same vein as a book that is printed; it is a booklet showing the advantage of shipping by air, what the rates would be—not all rate charts but some typical examples. It would be in the nature of a brochure.

566 I said I examined the books over the weekend. Pre-
567 vious to that time I examined them on Thursday. I am in Los Angeles at least twice a week, on an average. The books are constantly being examined. I examine cash receipts journal, cash disbursements journal, general jour-

nal, sales journal, accounts receivable ledger, accounts payable, purchases, minute book, corporate minute book,
568 stock records, sales invoices, purchase invoices and any items that I believe necessary other than those enumerated—reconciled bank statements. I am on a retainer with City Messenger of Hollywood, Inc.

570 BENJAMIN FULLMAN, called by the defendant as an adverse witness, having been previously duly sworn, testified further as follows:

571 Defendants' Exhibit 15 received in evidence.

Direct Examination by Mr. Mullin.

I can identify Defendants' Exhibit 16. It was a
572 memo that I sent to Irving Mansfield on December 13, 1954. I sent some Christmas cards along with that. The Christmas cards are Defendants' Exhibit
573 15. The Christmas card states "City Messenger Air Express, Division of City Bonded Messenger Service." I did not put that on there so that people in Chicago would identify City Messenger Air Express with City Bonded Messenger Service here in Chicago. We
574 wanted that sent out to all the people who had used City Messenger, and they were late in being printed. The printer stuck in the word "Bonded." The "Bonded" was no part of our name in New York or Los Angeles, but, because of the lateness, if we had sent them back, we would not have had any Christmas cards. The card that we had a little mark on where it says "City Messenger Service" and right at the end it says "bonded" letting them know that we had a bonded service, but the printer stuck it in as part of the name. We were adver-

575 tising City Messenger Service. The printer was not told to put "Hollywood, Inc." on there. He was told to put "City Messenger Service."

Defendants' Exhibit 16 received in evidence.

576 IRVING MANSFIELD, called as a witness on behalf of the defendants, having been previously duly sworn, was examined and testified as follows:

Direct Examination by Mr. Mullin.

My name is Irving Mansfield. My address is 5210 Blackstone. I am the president of the City Bonded Messenger Service, and I am in charge of operations. City Bonded Messenger Service is a defendant in this law-
578 suit.

577 Counsel agreed that City Bonded Messenger & Trucking Service, Inc., was incorporated on October 1, 1953, and that City Bonded Trucking Company, Inc., was incorporated on October 5, 1956.

578 Witness continues: Prior to the 1st of October, 1953, which is the date that we incorporated as the City Bonded Messenger & Trucking Service, Inc. we operated a co-partnership, Nadine Mansfield and myself. Nadine is my wife. We had operated as a co-partnership since about 1943. We operated continuously as City Bonded Messenger Service. Defendants' Exhibit 17 is a bill of sale from Irving Mansfield and Nadine Mans-
579 field co-partners doing business under the trade name and style of City Bonded Messenger & Trucking Service to the corporation known as City Bonded Messenger & Trucking Service, Inc., dated October 2, 1953. That is the assignment to the corporation, signed by myself and my wife, Nadine Mansfield. The signatures are that
580 of my wife and myself. The compensation paid amounted to around $15,000.00 or thereabouts. As a re-

sult of this transfer we continued to do business under
581 that name. We continued with the name City Bonded Messenger & Trucking Service, and added Inc. Prior to entering this co-partnership I was in the messenger business. At first I started out as a sole proprietorship, I think in 1942 or '43. Shortly thereafter I formed a
582 partnership with my wife, Nadine Mansfield. I operated under the name of City Bonded Messenger Service as a sole proprietorship. My first address was at 221 North State Street. The telephone number was Randolph 6001. I still have the same number, 6001, Randolph. We registered under the assumed name
583 of City Bonded Messenger, maybe six months or so later. I can identify Defendants' Exhibit 18. It is an assumed name certificate which was made out to City Bonded Messenger, 221 North State Street, dated September 1, 1943, signed by the County Clerk, Michael Flynn.

Defendants' Exhibit 18 received in evidence.

584 Witness continues: When we started at 221 South State Street, the leasehold was held by Mr. Harry Gordon who operated the Gordon Express & Transfer Company. He previously had the leasehold, and I occupied part of the space and paid my rent to him. Mr. Harry Gordon passed away, and I purchased the assets of the Gordon Transfer & Express Company, which had been operating since 1920. I received one of the original charters.

585 Defendants' Exhibit 19 is an assignment of the estate of Harry Gordon of Gordon Express & Transfer Co. to Irving Mansfield and Nadine Mansfield, City
586 Bonded Messenger Co., dated October 10, 1949.

587 Defendants' Exhibit 20 is an order from the Department of Public Works in Springfield, ordering and granting us certificate No. 2286, and the certificate was dated February 1940. That was the first time certificates were ever issued, because the Act was passed in 1939. Subsequent to that one had to have a certificate but prior to that time, no certificate was needed. We gradually dropped the name of "Gordon" and continued on with the name "City Bonded Messenger", and I believe in some of our ads in the phone book and also on some stationery we mentioned that we had been in business since 1925 and are continuing with the
588 business and still have some of the old accounts of the Gordon Express Company. We received, as a result of this transfer, all accounts, the good will, the equipment and the name, and also the certificate, and we continued on with the same phone number he had. I think we still have that phone number, Randolph 6-3227.

Defendants' Exhibit 21 is the original ledger that we had when we operated the City Bonded Messenger
589 Service, and all the entries are here. There were previous ones, but this happens to start with 1943. That is the sales for 1943, the volume of sales for accounts. By sales I mean the Messenger service performed for the month of September '43.

590 Defendants' Exhibit 21 received in evidence.

591 Defendants' Exhibit 22 received in evidence.

592 Defendants' Exhibits 23, 24, 25 and 26 received in evidence.

593 Defendants' Exhibits 27, 28, 29, 30 and 31 received in evidence.

596 Witness continues: Defendants' Exhibits 29 to 31 were not the first certificates that I received. There

were certificates prior to this, but in 1956, there was a law passed that we had to register for that. This certificate was issued to us in December 1953 as a common carrier of general commodities within 50 mile radius from 221 North State, Chicago. This is a certificate of authority from the State of Indiana that was issued to us and approved March 4, 1954. The certificate of public convenience and necessity as a common carrier of property was issued in August, 1954, by the Illinois Commerce Commission. The other one is a membership in the Illinois Truck Operators Association in 1947, issued
597 to City Bonded Messenger Service. There are certificates prior to this.

Defendants' Exhibit 7 received in evidence.

599 Defendants' Exhibits 32, 33, 34, 35, 36, 37, 38, 39 and 40 received in evidence.

603 Witness continues: I can identify Defendants' Exhibit 36, comprising an advertisement of City Messenger Air Express. This is a piece of advertising matter furnished to us by Mr. Ben Fullman, and to be given out by our salesmen on behalf of Mr. Willard Gilbert, who has his name on it. It has our telephone number, Randolph 6-6001, on it. This was probably about the inception of the CAB certificate, which was about May of 1954, up until about January, 1955. De-
604 fendants' Exhibit 40 represents an ad we placed in the program of the Chicago Bears' book advertising City Bonded Messenger & Trucking Service, Randolph
605 6-6001: The date is November 14, 1954. It appeared on other days, in other programs. Every home game played at Wrigley Field carried the same advertisement, and I think each game printed about 100,000 programs. I can identify Defendants' Exhibit 35 comprising the calling card and the two advertisements. These are pluggers

put out by City Bonded Messenger & Trucking Service,
606 around 1948. They were distributed up to the present time. They are still using them. Defendants Exhibit 34 comprising two blotters, one with the telephone and the modernistic messenger boy, I would say that was distributed in 1943 or 1944. The blotter on the top with the heart and the loop with the messenger boy with the script "C", was in around 1948.

607 We operate a messenger service. At the present time we have three offices, one located in the Prudential Plaza at 193 North LaSalle Street. We have a trucking terminal at 216 Hill Street which is about 1000 north, off of Wells Street, where we keep our trucks. At the present time we are operating about 75 to 80 pieces of equipment on the street. At peak times of holidays, we add about 20 more. This is special messenger work and trucking. In our office at 193 North LaSalle Street, we have four dispatchers answering the phones. We have personnel in the office of about 10, not including Mrs. Mansfield. At the Prudential Building, we have a dispatcher. At our garage at 216 West Hill Street, we have two dispatchers and a maintenance man. That is about all the help I can think of that we have. We have a total of around

608 75 to 80 messengers. We own the garage and terminal at Hill Street. That is a 85 by 100 foot big garage type building. It would accommodate, I would say, about 50 pieces of equipment, although we don't have that many trucks there. Messenger boys operate with vehicles, passenger cars, station wagons and some motorcycles. We also have at the present time about 12 to 14 foot messengers who walk around the loop. These boys are all uniformed and identified by their badges. I think that we own 12 trucks. We lease 13 trucks and they are all iden-

tified and painted with the name City Bonded Messenger & Trucking Service and the telephone number. Defend-
609 ants' Exhibit 41 is a nickel plate badge that the men wear on their caps. It says "City Bonded Messenger & Trucking Service" and it has the number of the driver, the number of the messenger. They started using them about 1948, 1949.

610 Defendants' Exhibit 41 received in evidence.

Witness continues: The badges are worn for identification. We handle a lot of valuable material, and that is why they wear it.

611 Defendants' Exhibits 3 and 4 received in evidence.

Witness continues: There is a relationship between Defendants' Exhibit 3, Defendants' Exhibit 4 and Defendants' Exhibit 42.

612 The one of July 1, 1954, the "Dear Ben", Exhibit 3, is as follows:

"Enclosed you will find a new rate chart. We will have 5,000 in the mail by the end of the month."

"Also art work for book covers O. K. and return via air mail. We are almost out of chart books."

The one dated July 8th from Ben Fullman reads:

"Your brochure is very clever. It should draw attention. Of course this alone will not bring in business, but it is still good advertising matter. One must use other means for selling his business."

This happens to be a brochure we used from May,
613 1954, to January, 1955. We discontinued using that in 1955. In our business a rate chart and a brochure is one and the same, and always has been. Defendants' Exhibit 42 is the brochure referred to in that letter.

Defendants' Exhibit 42 received in evidence.

Witness continues: In the early part of, 1951, I

614 received a telephone call from Ben Fullman asking me if I would like to join with Mercury and City Messenger of Hollywood, in rendering service to the members of the Diners' Club. He said that there was a possibility of picking up a lot of extra business there. I said, "Write me a letter about it and details about it. I think it sounds pretty good." Subsequent to that day we did sign an agreement with the Diners' Club to furnish members of the Diners' Club with messenger service in three cities, that is, New York, Chicago and Los Angeles, and each one was to bill for their own services rendered in their own locale, and the Diners' Club was to reimburse
615 each one separately for the invoices. I also received a letter or telephone call from Sidney, I think, mentioning that they were going to put out to members their first magazine or periodical called the Bagatelle, and he mentioned that we had a chance to get the back cover on this magazine for $450.00 to $600.00. I don't recall the exact amount at that time. He asked me if it was agreeable to me to go in to prorate the advertising with Mercury and City Messenger of Hollywood. He said he had some big agency that was going to write up some nice copy and sell the messenger service to the members of the Diners' Club. I said that it would be agreeable to me to be done. I think they arranged with a big agency, the Dick Brown Agency, to do some illustrations for the back cover. I think that it is one of the leading advertising agencies in cover work, and we were paying $600.00 for the back of the cover and should have some good illustration, something to ring a bell for the Diners' Club members that this service was available. The Diners' Club was supposed to take care of this advertising end of it, but about a week before the publication was to come out, I
676 got a letter from Sidney saying the advertising agency

up to that date had not made an illustration for us, and there wouldn't be any copy available for the back cover. I believe I said to just skip it and we will have other editions out and will get in on those. He said, "We can't do that. We contracted to go in on this and we are paying $600.00, and we own it, and we have to put something on there." He said, "What do you think we should do?" I said, "The best thing to do is to call Tony Roper, the owner of Mercury in New York, and ask him what to do. I don't want to be the deciding factor." I received a call about two hours later from Sidney Fullman in Los Angeles and he said, "The advertising agency and I talked to Tony Roper, and inasmuch as the agency cannot get out the illustrations within the next few days before it goes to press we have to make up something ourselves." He appointed himself advertising manager for
that particular campaign and he said, "The best thing
617 for you to do is send us some of your formats and
letterheads and let me work out something." I thought he was a capable advertising man, and I said that it was agreeable, and by air mail I sent out two or three brochures we had around the office and two or three letterheads. I know the advertising consisted of taking three letterheads, one which he chose of mine, and they had composited photostats made of it and had used it. That was the extent of our advertising printed on the back of the Bagatelle magazine, and that cost us $600.00.

[February 26, 1957]

619 I first saw Plaintiff's Exhibit 6, an advertisement
appearing on the back cover of the Bagatelle, after October, 1951, after the issue had been printed. This is
distributed to the members of the Diners' Club and
620 not the general public. There was never any approval
of that advertisement before it appeared in the pub-

lication. I sent the ones appearing here now and also sent one with the messenger boy running through the "City" script. I never gave Sidney any approval or authorization which one to put in at the time.

The number 100 on Defendants' Exhibit 41 is a number which identifies our messenger boys. The messenger boys are identified by numbers, from 100, and above 100. Then, below 100 are the truck men. We have been using badges now since 1943, to identify
City Bonded Messenger Service, up until the pres-
621 ent date. They have changed. The shield is
changed. First we had buttons and then we had an oblong plate, then this type of plate and then a plate like this previously that we had trouble with, when the nickel had worn off and it turned black. I
think this is the fourth time we have had these made.
623 In 1942 or 1943 there weren't any names of "City
Messenger" or "City Bonded Messenger" in Chicago and it hasn't been until this date. There have been other companies under the name "City", but they have never been in direct competition with us. We have many forms of advertising. We have put out about 30,000 of those dialers that you have, direct mail advertising and we are on the radio every day. Previously, we were on WGES,
but at the present time we are on WJJD daily, five
624 days a week. Defendants' Exhibit 43 is one of our
dialers. It says "City Messenger & Trucking Service, Randolph 6-6001." I think we have distributed 30,000 of these from around 1953. These dialers are inserted in the telephone and you can just dial instead of using your fingers, or something. Defendants' Ex-
625 hibit 44 is a letter opener with a magnifying glass and
has on it the inscription "City Bonded Messenger Service," the symbol, and our telephone number. These
626 were a little costly so I think we distributed only a

couple of hundred of them. I would say they were
627 distributed in 1953.

In the year 1953, Ben Fullman called me from Los Angeles, long distance, and asked me if I knew anything about the air freight forwarding business. I said, "Yes, some." He said, "How would you like to go into the air freight forwarding business?" I said, "With whom?" and he said, "Well, with myself and the boys." He meant Sidney and Elliott and I suppose Norvin. At first it took me by surprise. I believe I mentioned to him, "Ben, I don't know how you can
628 come back to Chicago and enter into an air freight forwarding business. That stigma of the bankruptcy still prevails here, and to this day we cannot live it down." I said, "We went into bankruptcy back in 1934, and the creditors lost something like $100,000.00, and that was all in c.o.d. collections. I didn't think it would be wise for you to ever come back to Chicago after being involved in the bankruptcy of Twentieth Century." That was the end of the conversation, and I told him to write at some later date, and I would give it some thought. I believe he called again in the latter part of 1953 or the early part of '54 and he mentioned that he had sent Elliot and Norvin to New York to open up a messenger service there. I said, "I don't know how you can do that, us being such good friends with Tony Roper, knowing him so well, how
629 you can go to New York and open up a business and compete against him." I don't recall what he said, but it was to the effect that I have to worry about myself; I can't worry about Tony Roper. He said, "I am still interested in having you join me in the air freight forwarding business. I would suggest that you fly to New York and look at the operations they have there and get in touch with me at some later date."

I believe I flew to New York either the latter part of 1953 or the early part of 1954. I did see the operation there. They had a messenger service in the lower east side of New York in a small store there, and Elliotf showed me around town and showed me how they were operating. I think I stayed there about a week, and I left and came back to Chicago. When I came back and told Mr. Full-
630 man about the bankruptcy he said that he would step down as president and stay in the background in an advisory capacity, and that I could become the president, and he said that Elliott or Sidney or Norvin would also be officers. I told him, "Ben, the boys are all grown up now. They are not infants or teenagers like when we were in business. As far as Sidney is concerned, with that dogmatical personality of his, I don't know how I am going to get along with him." He said, "Don't worry about the boys; I will take care of that part of it."
631 After I came back from New York I had telephone conversations with Ben in Los Angeles, and he asked me what I thought of it and I said, "I think you have the nucleus of something that could be built up." He invited me out to Los Angeles. I flew out there over the Labor Day holiday of 1954. At that time I contacted my brother and we went to Ben's office at 1414 Cole Place and started talking about the financial arrangements we could make with City Messenger of Hollywood. At first the talk was of a merger, and my brother interceded and said,
632 "Ben, what do you consider the net worth of City Messenger of Hollywood?" and he said, "The net worth of City Messenger of Hollywood is nil. We haven't any assets." My brother said, "How would you want Irving to enter into a merger when the net worth of City Messenger is nothing and with the net worth he has?" I think Ben said, "What would you suggest?" Then my brother suggested forming a new corporation, and at that

time Ben said, "You know the CAB certificate is issued under the name of City Messenger Air Express, and is not transferable, and we could not enter into a new corporation." The next talk, my brother said, "Why don't you let him buy into the existing corporation?" which at that time was City Messenger of Hollywood, Inc., I guess, and then they talked back and forth, and Ben said, "Well, that probably would be the best solution to it." And my brother said, "What do you think Irving would have to put up to become a stockholder in the present corporation?" He said, "I don't know. I would have to figure that out."
633 My brother said, "How much do you think it would cost you to obtain the permit?" and he gave a figure of $12,000 at the time, and my brother said, "Is that what it would cost for Irving to come in?" and he said that would be on the basis of $12,500 for me to become a 50 per cent stockholder in the present corporation. That was the way the deal was left at that time. We adjourned the meeting and I told my brother to take care of the details of it, and I had to go back to Chicago.

634 Defendants' Exhibit 45 received in evidence.

Witness continues: I believe Mr. Fullman and I had correspondence and a few telephone calls prior to my going there on the Labor Day weekend in 1954. Defendants' Exhibit 45 is a letter addressed to Irving Mansfield and signed by "Ben" and some of the contents mention that he had a meeting with my brother there. After
636 I returned I had further correspondence and conversations with Mr. Fullman. I believe it was in the early part of December. When I came back to Chicago, I personally started to put on a sales campaign to sell City Messenger Air Express to all of our customers and all of the dispatchers were informed to sell the service to our customers and we continued doing that until January

of 1955. They supplied us with some advertising matter that we stuffed in our bills to the customers and, on top of that, I had two salesmen that devoted, I would say, about six months of their time exclusively to try to sell
637 the City Messenger Air Express to our customers only, at the time, because we had such a big list. By the time they got around to doing that, they had enough to do, so they were out on the street trying to sell the City Messenger Air Express to our customers. I did have con-
638 versations with Ben Fullman concerning the air freight forwarding business and the part that City Bonded Messenger would play. That started in, I think, May of 1954, that we were to handle it at the time and until an agreement was reached and signed whereby we would
639 have fifty per cent of the corporation.

We engaged in air freight forwarding until the first day that the certificate was issued. I think that was May or March of 1954. The certificate of authority from the CAB was issued to City Messenger of Hollywood, Inc., doing business as City Messenger Air Express, and couldn't be transferred. Prior to that I thought that the name was going to be City Messenger Air Express. We had
640 talks about it and that was the name that Mr. Fullman said that the certificate was going to be issued in, under the name City Messenger Air Express. I believe
641 the office received a telegram on or about March or May, stating that the CAB had granted the permit under the name of City Messenger Air Express.

Quite a bit of endeavor went into trying to sell the services and the paper work and the detail, and I called Ben in Los Angeles and told him that after the Christmas rush of the holidays, "I think I will come out there," and talk to him again. I said, "This thing is

642 running away from us and we are getting involved with too much money being put into it and something definitely must be done about it." He said, "Well, O.K." I believe I flew out to California about the 29th of December of 1954.

When I arrived in California the first thing I did, I contacted my brother in Los Angeles. I said, "I would
643 like to have you come over with me to the City Messenger of Hollywood's office. I want to have a showdown on the City Messenger Air Express." He said, "Well, all right, I will be glad to." So, we went over there and we had another conference with Ben Fullman and my brother Elias was present at the time. I said, "Ben, this thing has been running away. We are involved with a lot of money. What do you intend to do?"

He played a tape recording and the tape recording
644 was from, I think, Elliott or Norvin. I don't know if Sidney was in there or not. He played back the tape recording, and I can't say it verbatim, what the conversation was, but the context of it was that they decided not to go into a 50-50 corporation with me; that there were five in their family against only one of myself, and they didn't think they were getting a good deal and they could go out to the outside, to strangers, and get a better deal than I offered them and the answer was "No." I said to
645 Ben, "Well, you know we are involved with a lot of money in this proposition. When I flew out here in September, it was all agreed upon that I would have 50 per cent of the existing corporation and I even left it up to my brother to consummate the deal; that the money was at your beck and call any time the deal was consummated." He said, "Well, that is the way this deal stands now. The boys don't want it and there's just no deal." During the conversation that we had with Mr.

Fullman in September, 1954, there was no mention made that the deal was subject to the approval of the boys. He said he was the spokesman and the father of the boys and he could control anything that was said.

647 Our present advertising in the Red Book amounts to
648 approximately $800.00 per month. At present we do not engage in the air freight forwarding business. We perform the ground operations for possibly half a dozen air freight forwarders at the present time including
649 Emery. The ground operation comprises the local delivery and pickup to and from the airport within a radius of 50 miles of the airport and in the Chicago
650 area. In addition to Emery Air Freight, some of the other air freight forwarders are Hop Air Freight, Air Freight Shippers and Flying Tiger. There are one or two others, but I can't recall their names at the present time. I believe that Emery Air Freight is giving us in the neighborhood of around $500 a week business at the present time. We started performing this service for Emery subsequent to January, 1955, when we severed the relationship with City Messenger Air Express. Prior to that we hadn't performed any services for them but they had
651 made proposals. Emery Air Freight gave us reasons for not giving us that business. I had many meetings
652 with Emery, with Mr. Clear and Mr. Connors. They were very anxious to have us perform the ground operations only when we could sever our connections with City Messenger Air Express and, until then, they never gave us one dollar's worth of business. The air lines themselves are the largest carriers of air freight, without the assistance of air freight forwarders. We have many customers who ship by air freight and do not use air freight forwarders and for whom we per-

form ground operations. A few of them are NBC,
653 CBS, Burton Brown Advertising Agency, and Modern Talking Pictures. I think Modern Talking Pic-
654 tures has been an account of ours for about five years. We started doing business with them in 1952.

655 Defendants' Exhibit 46 received in evidence.

Witness continues: After I returned from California in January, 1955, I informed the personnel of the office to discontinue handling any air freight for City Messenger Air Express. I called Ben up on the phone after my return from Los Angeles and told him not to ship anymore air freight shipments in to us and we wouldn't handle any more from the Chicago area and that I am writing a letter to all the people we were doing business with, such as United Air Lines, the Railway Express, Western Union, and discontinuing our guarantee of any credit concerning City Messenger Air Express
656 in this area. We didn't have any charge accounts with any of the air lines regarding shipping freight. We didn't have a charge account with Western Union, and I don't believe we had a charge account with Railway Express.

657 Defendants' Exhibit 47 received in evidence.

Cross Examination by Mr. Cohen.

658 In 1955 I was the president of City Bonded Messenger & Trucking Service, Incorporated. I caused the corporate name to be changed to City Bonded Messenger Service and City Bonded Trucking Company. They
659 are two separate corporations now. I do not operate any other company in the messenger service business. I do not operate any company in the air freight forwarding business. We do not operate under another name. Those are the only names we operate under. In 1955
660 I did not operate under another name. The business

I operate is primarily a messenger service business. That is the business of carrying envelopes and small packages which men can carry from one location to another. Another part of my business is trucking or general commodities. That is within a 50 mile radius of my present address. We do not have any contracts with anyone to carry general commodities into the State of Indiana at the present time. There is a possibility that some of my trucks carried general commodities into the State of Indiana
661 within the last week. I don't check calls every day.

I have three offices. I can't stay in one place. I go from one place to another. I am at the Prudential Plaza part of the time. I am at 193 North LaSalle Street part of the time, and part of the time at the truck terminal at 216 West Hill Street. The time spent in one of-
662 fice varies. It is according to the amount of details I have to do in each office. There are days when I spend all day in one office, and days when I spend half
663 a day, and times when I spend an hour or two. Messenger business comes into 193 North LaSalle. Messenger and trucking both come into my place of business at the Prudential Building, and at Hill Street, messenger and trucking both. 90 per cent of the messenger business comes to 193 North LaSalle and possibly about 10 per cent out of the Prudential Building. Should we get a call from any of the other numbers on the messengers, we have direct lines where the customer can be switched over
664 to 193 North LaSalle. This work is in and about the Loop and consists of carrying packages and envelopes. If it is a messenger on foot the maximum he could carry would be an envelope or five or ten pounds. If it is a messenger in a car he could probably carry from 25, 50 or 100 pounds. The messengers that are not on foot op-
665 erate their own vehicles. They work on a percentage

666 basis. Possibly forty or fifty messengers use their own cars in my business. We own two cars. We own twelve trucks. We use between 20 to 25 trucks in our operation of general trucking. The rest are not leased; they are employees with their own equipment. The men who use their own trucks and their own automobiles are work-
667 ing for us exclusively. They carry our permit on all their trucks. I would say about 80 to 90 per cent of our messengers are employed on a full time basis. That is eight hours a day. Practically all of these wear badges, some have shirts that are lettered up, and some have material insignia, but they are all identified.

We terminated our relationship with the plaintiff corporation in the middle of January. We tried to cease doing business with them earlier but the shipments
668 were probably en route someplace, and they dribbled
669 in up probably to about the middle of January. I caused to be filed on January 19, 1955 Plaintiff's Exhibit 21 with Edward J. Barrett a certificate that City Bonded Messenger & Trucking Service assumed the name of City Messenger Air Express on or about the 19th of January, 1955.

670 Plaintiff's Exhibit 21 received in evidence.

Witness continues: When I terminated doing business with the plaintiff corporation there was no existence of bad feeling, only disappointment on my part, that's
671 all. I did not refuse to let any of the principals of City Messenger of Hollywood enter my office to audit books relating to the business that I did for them on or about January 7th or 8th of 1955. They were in my office for ten days, auditing books. I did not cause Sidney Fullman to be thrown out of my office around January 10th or

15th of 1955. I did not have any of my employees throw him out. I did cause, on behalf of my corporation, a petition to be filed with the United States Patent Office
672 for a service mark. It was filed in the late '50's. I don't recall when. I couldn't recall unless I see the instrument.
673 Plaintiff's Exhibit 22 is dated February 1, 1955. I
674 guess that was the date I filed the Petition. It is possible that I signed some affidavits in that petition. I suppose they would be true. The application related to a service mark, a messenger boy, running through the letter "C" of the word "City". I have not filed any other application. That is the only one. I don't recall what I said in those affidavits. The statements con-
678 tained in the affidavit on page 11 and page 12 are true. It is true that I received a telephone call on January 19, 1955 from the Telephone Company, Mr. E. W. Nissen. I am not aware of the fact that the plaintiff corporation had applied for a listing under the name of City Messenger Air Express. I was advised or asked
679 by Mr. Nissen at that time if I would give up my number, and I refused to do so at that time. We still had City Messenger Air Express. We were not operating any air freight forwarding. We performed the ground operations of air freight, and still perform the ground operations of air freight. We don't have the title of
680 City Messenger Air Express. There was still a listing in the book, City Messenger Air Express, and that was still from the time we were in business with the City Messenger Air Express, the Fullmans and I couldn't take it out at that time. I believe that was Randolph 6-2391. That telephone number was secured at their request, but we received, I would say, ten calls for City Bonded Messenger on that phone to one for City Mes-

681 senger Air Express. The application for a service mark related to a messenger boy running through the letter "C" of the word "City". We have used that
682 mark continuously in our business since 1948. We have used the messenger boy since our inception in
1942. We used the script "City" since 1942, and I believe we had the prior right to use this symbol. That
683 is why we had it registered. We have used the boy continuously since 1948, and since 1942 also we have used the messenger boy. The Red Book is not our only
684 medium of advertising; it is just one of many. Offhand I couldn't tell you whether or not we advertised with that script and the boy running through the "C" prior to 1955 in the Red Book without viewing the Red Book. It is not correct that I knew that the defendant was using the same service mark in his messenger service in Hollywood, California, and in New York City. We do not have a telephone number in New York.

Defendants' Exhibit 43, being a telephone dialer
685 was purchased from Francis Sweitzer. The Glidden Company may have been the manufacturers of it, but the salesman was Francis Sweitzer. I knew of Plaintiff's Exhibit 23, which is a hand with a ball at the end, be-
686 ing a telephone dialer. They were not purchased from
687 the Glidden Company at the same time. Plaintiff's Exhibit 23 was purchased after I had distributed
688 close to 10,000 of these. Defendants' Exhibit 43 was distributed prior to Plaintiff's Exhibit 23. I did not order Plaintiff's Exhibit 23 for the plaintiff from the Glidden Company. Mr. Ben Fullman ordered them. The Glidden Company is located in the east somewhere but the representative is here in Chicago.

Plaintiff's Exhibits 22 and 23 received in evidence.

689 Witness continues: Page 13 of Plaintiff's Exhibit

22, being air bills of City Messenger of Hollywood, Inc., doing business as City Messenger Air Express, are the same as Plaintiff's Exhibit 1. I would not have
690 these air bills other than as a result of my association with City Messenger Air Express. These are the same bills that I ordered for City Messenger Air Express in March of 1954. I ordered them for City Messenger
691 Air Express. We did not receive the forms until weeks after we received Defendants' Exhibit 9 which
692 is a telegram. I worked on the copy with Mr. Fullman. As far as I can recollect I did not handle any other account for any other air freight forwarder. It was during this time that I received entreaties from Emery Air Express. I told them that I wanted to handle their business. That was part of my operation. Their answer to me was that they couldn't give me that type of business because, originally, I asked them why and they said the original tariff that was filed by City Messenger Air Express was our own tariff and it is "one of the reasons why we couldn't give you the business." We do have a
693 contract with Emery Air Express now. I don't know for sure whether that contract is on file with the CAB.
694 We have a contract with Hop Air Freight. I don't know whether the contract with Hop Air Freight is on file with the CAB.

695 I was in New York subsequent to the opening of their New York office. The exact day or month, I couldn't give you. They already had an office there. I don't recall July, 1954. I don't recall the date or the month or the year that I was in New York and had a discussion with Elliott Fullman and Norvin Fullman. It was in a part of 1954. What month it was, I couldn't
696 really tell you. I never offered any money to defray expenses for the filing of the petition. I did not agree with Ben Fullman, in December of 1952, to handle his

business in Chicago. It was prior to March of 1954 that I agreed with him to handle his business. It was
697 only on a partnership basis. His first call was in the
698 early part of 1953, from Los Angeles, long before he ever secured the permit; and it was on that basis that we discussed that if we entered into an agreement, that it would be on a 50-50 basis. I think there is some correspondence to that effect, too. There is corre-
699 spondence relating to the arrangement. I made two
700 trips out to Los Angeles. The first trip was in September, 1954. I thought the CAB permit was under the name of City Messenger Air Express and it wasn't an assumed name. I placed Plaintiff's Exhibit 1 with
701 Uarco six months before September of 1954.

Defendants' Exhibit 41 is one of our badges. We used the type and the symbol, but that particular badge, I couldn't say if we did use it in 1948. I couldn't tell
702 you when we first started using that badge. We first
704 started using a badge like that with the symbol in 1948. City Bonded Messenger & Trucking Service
705 is still using the telephone number listing Randolph 6-2391. That is the same telephone that I secured for
706 City Messenger Air Express and for City Bonded Messenger.

Defendants' Exhibit 17 which is a bill of sale
707 was executed in the lawyer's office. I believe it was executed in Mr. William Allen Nathanson's office, in October sometime, in '53 I think.

I knew Mr. Fullman was connected with one messenger service up until about 1947, the Modern Delivery
708 service. I believe they were using the name of City Messenger Service. I knew that during the time from approximately '47 to '51 Sidney Fullman and Sam Chess were in the same business, the messenger service business.
709 I have been good friends with Ben Fullman for thirty years. I think the first time I saw him after

the 30's was in 1948 when he paid me a visit here, and he was connected with some soap company or something.
711 I am not sure whether I had any correspondence with him in 1943 and 1944. That is too far back.

Defendants' Exhibit 42 is familiar to me. This particular brochure was originated between May of
712 1954 and whenever they were put in the mail, I think in July, 1954. I would say about 5,000 of these rate charts were distributed. I think 5,200 was the exact number. After January, 1955 we discontinued them. City Bonded Messenger & Trucking Service was local, but we considered ourselves national as long as we had connection with the City Messenger of Hollywood in New
713 York and Los Angeles. The telephones, Murrayhill 5-1003 and Hollywood 4-1888 and Mutual 8191 and Crestwood 5-0183 were all plaintiff's numbers.

I did not call Ben Fullman on the telephone. It was understood that I was discontinuing service in Chicago
714 when I left Los Angeles after he played the tape recorder, that we couldn't have a 50 per cent share, and I told him at that time, "Ben, I don't want to represent you or want your name in Chicago in the City Messenger service. It is too conflicting with ours." We are in conflict, for they are performing the same service. City Air Express performs messenger service in Chicago.

715 *Redirect Examination by Mr. Mullin.*

In 1943 I filed under the name of City Bonded Messenger Service. I filed under the Assumed Name statute in
716 January, 1955. I am familiar with the statute, and I knew I had to file an assumed name in the City of Chicago, inasmuch as we held ourselves out as being City Messenger Air Express in this area and we were responsible for all bills and everything, on the advice

of my counsel who said I should register it under an assumed name.

There are two reasons why I formed two corporations. The main reason was union affiliations. They put pressure on us that as long as both of them were together the messengers would have to join a union.
717 That was the main reason. The second reason was taxwise. My auditors advised me to form two corpo-
718 rations.

Defendants' Exhibit 9, from Ben Fullman to me, stating the CAB approval was issued to City Mes-
719 senger Air Express meant to me that the certificate was issued in the name of City Messenger Air Express and no other name.

NORVIN FULLMAN, called by the defendants as an adverse witness, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Mullin.

720 My name is Norvin Fullman. My residence address is in California, 1258 Sweetzer. My business address is 845 South Wabash, here in Chicago. I am with City Messenger of Hollywood, Incorporated. I am the secretary-treasurer. I have several duties. Presently, I am the regional manager here in Chicago. It covers Minnesota, Missouri, Michigan, the whole midwest. I have
721 been the midwest regional director of City Messenger of Hollywood since about August of 1956. I am pretty familiar with the operations of the regional office here in Chicago. Our agents in the midwest are under my
722 charge and direction. These agents do have offices. I do not occupy their offices, but I am visiting back and forth and overseeing the various operations they have. I believe we have telephone listings in some of those agents' offices. I am not sure which ones. I would

have to check the books for that. We have several. I would have to get those out of the main books, and
723 they are in Los Angeles. Air freight forwarding operations are conducted here out of the Chicago office. We do not engage in any messenger service. To my recollection we have never engaged in any messenger service. Since August we have not. We filed an application for a
724 certificate of necessity and authority because according to some of the rulings in the State of Illinois—and the states differ—I was not quite sure about it myself, and we wanted to cover ourselves in any case, because, although we are performing our type of service, some of those might fall in a different category. Although under the CAB it might be correct, it might not be according to
727 what the state would allow. I am not sure of the date when City Messenger of Hollywood, Inc. first began to
728 transact business in the State of Illinois. I can't recall the date because I was not in the area at the time.

Defendants' Exhibit 48 received in evidence.

Witness continues: From March, 1954, to January,
729 1955, I was secretary and treasurer of the plaintiff corporation. We do have an employee by the name of Faye Baker working for us. I can't recall the exact date he came to work for us. He has on his application, I believe, from what he said, that he worked for City Bonded. He is an expediter, a driver. He picks up and delivers
730 from the air port. If a shipment might come in by some other form of transportation, he would pick it up at the terminal somewhere in the city. It might not be the air port. That would depend on what the facilities would call for, and what we would have to use for transportation to and from various cities. He would pick
731 up at bus terminals, railroad terminals and deliver

them. We have five employees in the Chicago office. We employ two salesmen, including myself. The other salesman is Richard Rumchaks. We do have an employee by the name of Aaron Mallory working for us. I would
732 not know that he worked for City Bonded Messenger & Trucking Service, Inc., without checking the records. We operate about four pieces of equipment in Chicago. We don't own equipment of our own. It is
733 leased equipment. We have received telephone calls from customers seeking messenger services. We referred them to Cannonball. They have asked if we can make a pickup for them and, of course, we answer, "It is CMAX, City Messenger Air Express," and they say "Can you make a pickup for me?" and, we say, "To what city is it going to?" and they say, "It is local," and we say, "This is City Messenger Air Express; we are air freight forwarders. Do you have something going out of town?" and they say, "No; it is local," and we say, "Why don't you call Cannonball?" Sometimes they ask for a recommendation and sometimes they hang up. To my knowledge they do not ask if we are City Bonded Messengers & Trucking Service.

735 IVY GOOTNICK, called as a witness herein on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Mullin.

My name is Ivy Gootnick. My residence is 4814 North Albany, Chicago. I am employed by Chicago
736 Salesbook Company. I have been employed there for more than 25 years. I know the defendant in this case, City Bonded Messenger & Trucking Service, Inc. I have known Mr. Mansfield since, I would say, in the latter

part of the 1930's. I am a sales person. My
737 official title is secretary-treasurer. I have done business with the City Bonded Messenger Company. Since their inception in 1942, I have been doing business with them. We furnish their receipt books and delivery
738 books. I can identify Defendants' Exhibit 49. We made that. That is a receipt book. We have our imprint on the bottom. We have been making those for them since their inception. It would be pretty difficult to say how many we have made since 1942 because they ordered every year and they would change quan-
739 tities in the years. I wouldn't be able to say. We have been making the printed cover ever since the book was printed. We have been using that cut of the little boy in it since 1948. Prior to that we have used cuts. I know they have used that cut. I am pretty sure we used that. I wouldn't say definitely, but I know in 1948 we
740 used that cut for sure. I don't recall whether there was a messenger boy on the previous cuts. Those books are rendered once a year. I can identify Defendants' Exhibit 6. We have our imprint on the inside. We made
741 these books for City Bonded Messenger & Trucking Service. I think an order for that came in May of 1954. We only made that once, with that
742 printing on it. I don't recall the date of the last order for Defendants' Exhibit 49. I don't recall what
743 the quantity of the last order was. I think it was 3,000. We printed over 4,000 of the books constituting Defendants' Exhibit 6. There was a partial shipment made to New York, a partial shipment to Los Angeles and the balance to Chicago. There were 2,000 shipped to Chicago, 1,000 each to Los Angeles and New York. We have been paid for the printing of the Defendants' Exhibit 6 book. There was a considerable controversy, but

I was told that I had to receive half of the payment
745 from Los Angeles and the other half would come from Chicago. I received my Chicago half but I had to ask an attorney to collect the half from Los Angeles. That was collected from the plaintiff in this suit.

746 Defendants' Exhibits 1, 17, 43 and 44 received in evidence.

Cross Examination by Mr. Cohen.

Our company manufactures Defendants' Exhibit 49 for defendant.

748 Defendants' Exhibit 49 received in evidence.

ANNE M. LOMBARD MAURICE, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Mullin.

My name is Mrs. William Maurice—Anne M. Lom-
749 bard. My residence is 3180 North Lake Shore Drive.

I am acquainted with the defendant in this case. I am not presently employed. I was employed by the defendant at one time. I was employed with Mr. Mansfield when he worked with the Cannonball for the years 1938 to approximately 1943 or '42, and then at the inception of City Bonded Messenger, 221 North State, from 1943
750 to approximately January, 1956. Originally I started out with Mr. Mansfield as secretary and soliciting business on the telephone, and regular general office work. When I left the company I was an officer of City Bonded Messenger, Incorporated. I am not presently an officer. We started out and formed the City Bonded Messenger Service with a driver and one truck which Mr. Mansfield owned. It was a very small office, and we had space with the

Gordon Trucking Company. It was messenger and
751 trucking service. In 1943 or '44 Mr. Gordon passed away and Mr. Mansfield purchased the rights and assets of the Gordon Trucking Service. Mrs. Nadine Mansfield is a personal friend. She has been active in the business since practically the business inception, the first year or second year. I started out originally with Mr. Mansfield as an individual. It was originally a sole ownership of Mr. Irving Mansfield, and then it became a
752 partnership in the first or second year. Mr. Irving Mansfield and Mrs. Nadine Mansfield were the partners. That partnership continued until approximately 1953. Then it was made a corporation. It continued under the same name, City Bonded Messenger Service & Trucking. City Bonded Messenger & Trucking has used symbols through the years. They have used a variety of forms, from messenger boys, trucks, little motorcycles, little boys next to a truck, little messengers
753 on the C coming through the "City" Bonded. The service mark, comprising the little boy with the word "City" and the little car there, has been in use since approximately 1948. I believe it has been used continuously since then.

I am acquainted with the plaintiff. I am acquainted with Mr. Elliott Fullman. He came into the office in 1948 at 217 North LaSalle Street. He worked for Mr. Mansfield part time as a salesman, and also helped in the business advertising. I met him prior to that in 1945, when he came through, and Mr. Ben Fullman, I believe I met for the first time in the office of Cannonball, and I had seen him prior to that with
754 Mr. Mansfield when I was a cashier in a restaurant at Henrici's in the Merchandise Mart. I was present at several conversations. I didn't participate in them, but

Mr. Fullman came to the offices of the City Bonded Messenger at 193 North LaSalle Street, in 1953 or 1954, the early part, and they were discussing the business of air freight forwarding. The conversation was between the two men and I was present. Mr. Ben Fullman came through from Los Angeles, on his way to Washington with regard to the CAB permit, to gain an approval, which he discussed with Mr. Mansfield in the office. I did not
755 overhear any of these conversations verbatim. I couldn't repeat their conversation verbatim. It was with regard to this particular subject, approval of the CAB permit, and Mr. Mansfield and he were negotiating for this new air freight business. I believe I overheard the conversation in March of 1954. He was on his way to Washington. Prior to that he had been in the office and they were discussing things that I didn't participate in, but I was given to understand by Mr. Mansfield in the presence of Mr. Fullman that this was to be a new
756 corporation. Mr. Fullman was in the office discussing the CAB permit, the approval he had hoped to gain when he visited Washington, and then he was going to New York, and he asked Mr. Mansfield to discuss the accounts and operations of City Bonded Messenger, and that it was very good for us to be performing this ground operations, that our account was so well established, that we had between two and three thousand accounts at that time, and we would get in perfectly. I was given to understand at that time that Mr. Mansfield was to be an officer of this new corporation, which was to be a private corporation between the Mansfields and the Fullmans.
757 This was the City Messenger Air Express. After this conversation Mr. Elliott Fullman came to our offices, and he had space and worked in and out of the office and worked with our salesman, Mr. Gilbert, getting acquainted, and our Mr. Gilbert took him to see the accounts. They

were negotiating and preparing to get this business started for CMAX. During the Labor Day weekend in 1954, Mr. Mansfield went to Los Angeles and returned in a
758 week.

[February 25, 1957]

761 Defendants' Exhibit 50 is a letter from Western Union Telegraph Company addressed to City Messenger Air Express, dated October 9, 1954. Defend-
762 ants' Exhibit 51 is a letter from Western Union Telegraph Company addressed to City Messenger Air Express, 193 North LaSalle Street, dated January 10, 1955. Defendants' Exhibit 52 is a letter from the Railway Express Agency addressed to City Bonded Messenger & Trucking Service, 193 North LaSalle, dated August 11, 1954.

Defendants' Exhibits 50, 51 and 52 were received in evidence.

Witness continues: In January, 1955, we were advised
763 in the office that our relationship with City Messenger Air Express had been severed. We no longer continued to take calls for air freight forwarding after that date. When a call came in for air freight forwarding we advised them we could take care of their service to the airport, but they would have to act as their own shipper or consignor beyond that, and that they would have to have somebody pick it up themselves. At the time I left the employment of City Bonded Messenger it was January of 1956 and that was after the peak season, so our employment was down. It was about 60 or 70. At the time I left we were picking up Emery Air Freight Forwarders' shipments from the airport and distributing them in the city. I imagine
764 the relationship began in the spring of the year, the early part. I couldn't say for sure. Mr. Mansfield had that arrangement. It was the spring of 1955.

Cross Examination by Mr. Cohen.

765 I had been associated with Mr. Mansfield when he worked with Cannonball in 1938 and 1939, and with Mr. Phillip Rosran. I was employed in 1943 by Cannonball. I was employed by Mr. Mansfield at City Bonded around September of 1943. I worked for him continuously from that date until January, 1956.

I gradually worked up from secretary to an
766 officer of the corporation. I respect Mr. Mansfield. In March of 1954, we had a general office downstairs and we had a balcony office. I was in all offices, upstairs
767 and downstairs, depending on where I was needed. Mr. Fullman and Mr. Mansfield were sometimes in the lower general office and sometimes upstairs in the balcony office. I was working in both offices, depending at what time. There were conversations generally in the office upstairs and downstairs. I cannot be specific in that matter. I was upstairs and downstairs 500 times during the course of the day. That is why I couldn't give you the conver-
768 sations verbatim. I didn't hear the entire conversation. I only heard snatches of that conversation. After that conversation, we were all informed by Mr. Mansfield in the office what the conversation was about. That was
769 March, 1954. We were informed in May, generally.

I did hiring, training and interviewing. Complete records were in the file. As to Elliott Fullman's salary, that was an arrangement between Mr. Mansfield and Elliott Fullman. I did not make out his payroll. He was doing part time work at that particular time. He was selling a lamb mold to the department stores and came to the office to see Mr. Mansfield and they had a discussion about

his doing part, time selling and advertising. The lamb mold is a cake form for an Easter cake.

Defendants' Exhibit 41 is a messenger badge.

771 WILLIAM HANSON, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Mullin.

My name is William Hanson. My address is 2105 Seward, Evanston, Illinois, and my business is advertising. I am connected with Cuttner & Cuttner, Incorporated, at 646 North Michigan Avenue. I am a production manager. With the exception of 7 months, I have been associated with them since 1944. I have been production manager since 1944. I am acquainted with the defendant in
772 this case, City Bonded Messenger & Trucking Service, Inc. I have known the defendant since 1944, ever since I have been in business. I have conducted business with them. We call them on the phone and have them make pickups, sometimes at our office and sometimes at our clients' offices, pickup and deliveries. Referring to the first week in December, 1956, pertaining to a pickup and delivery, we use a photoengraver in Peoria, Illinois. We do quite a bit of business with them, and when we started
773 doing business with them we made a business arrangement with City Bonded that the engraving company, when they had packages and advertising proofs come into our office, they would send them up by Trailways bus; they would forward a letter in the mail the same day to City Bonded, which would receive it the first thing the next morning, go over to the bus depot, pick up the package and then deliver it to the office. The engraving plant did not have an office here in Chicago or any delivery service of its

own. Then it worked in reverse. When we had packages to go down to Peoria, we would call City Bonded, have them make a pickup at our office and they would take it over to the bus depot and see that the ticket was purchased and
774 the package was put on a bus to Peoria. On December 3, 1956, I had some proofs and art work due up from Peoria that morning. Normally, we would have our packages at our office from 9:00 to 10:30 in the morning, depending on the traffic and the circumstances, et cetera. On this particular morning when I did not have my packages by around 10:30 or 11:00, I called Peoria on the phone and found out that the package had gone up the night before on the Trailways bus. I called City Bonded and asked them why they hadn't picked it up and they told me in the office that their man did have the pickup and they were surprised I hadn't received it. I then called up the bus depot and talked to the man who takes care of the packages in the package room and he told me that the package had been picked
775 up. It was a very rush job, which is the nature of our business. I had to wait and I didn't get any package and finally, in the afternoon—I don't recall the exact time, but it was sometime after lunch—a messenger—and, if I can remember right, we were busy at the time—it was a colored man that came in and he just brought the package right at the edge of my office and
776 just said, "Here is a package here." I think that he had a cap on with a different kind of identification than the City Bonded Messenger. In fact, quite a few of them we know, not by name, but we recognize, because they are in and out of our office so much. The man had,
777 if I can recall, on his cap he had a square—now, I can be wrong—but it was like a brass badge with the word "City" on it but I couldn't read the whole thing.

So, to me, the word "City" meant like City Bonded, and I started bawling him out as to why he was so late and he did know anything about anything and he just dumped the package and left, but we were never billed for that package at all, for that delivery. We were never billed by City Bonded Messenger.

779 Defendants' Exhibit 41 is not the badge that was worn that day. I would not say for sure that I would recognize that badge if it were shown to me. I can recollect a colored boy coming in, probably in his early twenties. I think he wore glasses, but I am not sure. To me it wasn't an important incident as to who he was. I was interested in getting my package and all I can remember is that word "City" and that's all. We never employ the services of an air freight forwarder directly. An advertising agency works entirely different than most companies

780 do. That is, I sit at a desk and order things over the phone and O.K. proofs but I don't do any of the actual work myself, as far as doing this—making the setting type or making engravings. We can O.K. them, we order art work, we order engravings and we order the sources to ship the plates to, the different publications, newspapers and magazines.

We never employed an air freight forwarder in connection with Peoria Engraving, regarding proofs or plates.

781 JOHN F. ROONEY, called as a witness herein on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Mullin.

My name is John F. Rooney. My address is 6146 South Mayfield Avenue, Chicago, Illinois. My occupation is advertising. I am associated with Swift & Company as

782 a manager. I have been a manager with Swift & Company since 1944. I am acquainted with the defendant in this case, City Bonded Messenger & Trucking Service. I have been acquainted with them since December of 1944. That was the time I became manager of this department. We have engaged in business with them. Whenever we had any material to be picked up in the city or delivered we would call City Bonded Messenger Service. They have been doing this for us since December, 1944. Prior to that time I understand they had been doing business with City Bonded Messenger Service. They per-
784 formed services for us continuously since that time.

ROBERT CHARLES McARTHUR, called as a witness herein on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Mullin.

My name is Robert Charles McArthur and my ad-
785 dress is 5643 North Glenwood, Chicago, Illinois. I am assistant to the traffic manager of The Admiral Corporation, 3800 West Cortland Street, Chicago, Illinois. I have been employed by The Admiral Corporation since August of 1955. I have always been in the same capacity. This is a file of the City Messenger Air Express freight bills. These are records of The Admiral Corporation.
787 The bill, dated 9/24/56, is a bill of the City Messenger Air Express. It refers to a pickup at the Greyhound bus depot, to be delivered to the Admiral Corporation in West Chicago, Illinois. That is a shipment from the Stand-
788 ard Oil Company in Bangor, Michigan, consigned to

the Admiral Corporation in West Chicago, Illinois. The shipment was forwarded by Greyhound bus from Bangor to Chicago, where the City Messenger picked it up and delivered it to our place in West Chicago. The reason for the use of Greyhound bus is that Bangor, Michigan is an off-line point as far as transportation goes, and since we want this to be expedited service to our plant in order to meet production, it is handled that way. We never used air freight to make a shipment out of Standard Oil in Bangor, Michigan. Bill No. 45147, dated 10/1/56, referring to the pickup at the LaSalle Street Station for delivery to the Admiral Corporation at 3815 West Armitage, is a shipment from the Formalite Corporation, Marshall, Illinois, consigned to our plant
789 here. It is due to production changes that we have to have expedited service, and it is sent by rail to where the City Messenger picks it up and delivers it to our plant by rail express. I know the defendant in this case, City Bonded Messenger & Trucking Service, Inc. I have done business with them. It is possible that I have done business with them prior to September 24, 1956. I don't know. I would have to check my file on the City Bonded first. I believe there was.

790 Defendants' Exhibit 53 received in evidence.

791 *Cross Examination by Mr. Cohen.*

I came to work for The Admiral Corporation in August of 1955. I am the assistant to the traffic manager. It is my job to get these expedited shipments. With regard to City Messenger Air Express, we go about ordering that service in the following way: Our expediter or purchasing department calls and tells me that there is a shipment coming out of somewhere from one of our suppliers, and asks that we handle it in an expedited manner so we

can get it into one of the plants to be expedited and meet a production schedule. After that it depends on where it is from. If it is in Bangor, Michigan, he calls and
792 tells me that they have placed it on the Greyhound bus, and I call City Messenger or City Bonded—we usually split it 50-50—and have them arrange to pick it up and deliver it to the proper plant. I never called the City Messenger Air Express and asked them to pick up the package in Bangor, Michigan. They have picked up in Newark, New Jersey. I am not sure of the name of the company there, but it is listed in the file, and to forward it by air to Chicago, where it is delivered over to our plant in West Chicago or Harvard, Illinois. You will find the airway bills attached to the back of that file as you go back, on shipments out of Newark, New Jersey.
793 All the air bills are attached to all of the slips of paper here.

794 CHARLES H. CUNY, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Mullin.

795 My name is Charles H. Cuny. My address is 11834 Eggleston Avenue, Chicago. I am a credit manager for United Air Lines. I have been credit manager for United Air Lines since February of 1945. I was acquainted with the parties to this lawsuit, referring to the plaintiff and the defendant, City Bonded Messenger & Trucking Service, Inc. I do not believe that prior to August 22, 1954, the defendant City Bonded Messenger & Trucking Service, Inc., had a charge account with us. I wouldn't be sure of that. The plaintiff, City Messenger of Hollywood, Inc., doing business as City Messenger Air Express, had an acount with us. They were making shipments, I be-

796 lieve. I believe they had charged a few bills prior to that time. That was August 22, 1954. Referring to that date, there was an inquiry from our Los Angeles office. I believe we may have accepted a few shipments and we placed them on a cash basis at that time. That was approximately August the 10th or 11th, as my file recalls, of 1954. On August 22, 1954, there was communication with Mr. Irving Mansfield. He phoned me in regard to the reasons for not granting terms to the plaintiff and what the conversation was, I do not recall, but it ended up that Mr. Mansfield's company told us they would guarantee the account and I believe gave us the name
797 of their bank, which we checked. They gave us the name of the bank so we could check the credit of the defendant. After we checked the credit of the defendants I wrote Mr. Mansfield to send me a letter guaranteeing the credit of the plaintiff and such letter was sent to me, I believe, on August 22nd, and as a result of that we granted further credit to the plaintiff. Defendants'
798 Exhibit 10 which comprises a letter dated August 23, 1954, on United Air Lines stationery and bearing the signature of C. H. Cuny, credit manager, addressed to City Bonded Messenger & Trucking Service, 193 North LaSalle Street, is my letter. That is the letter I referred to in my testimony. That is my signature.

Defendants' Exhibit 10 received in evidence.

Witness continues: After this incident of August 22nd and 23rd of 1954, Irving Mansfield sent me a letter on
799 August 24th, as I had requested, and in this letter he guaranteed the credit of the plaintiff. On January the 10th of 1954, he wrote me a letter canceling this arrangement of guaranteeing credit for the plaintiff. The letter is dated 1954, but, actually our receiving stamp shows 1955. I would presume that was a typographical error.
800 The letter reads as follows:

"On August 23, 1954 we agreed to guarantee credit charges for City Messenger Air Express of Hollywood, California. We are presently severing our financial arrangements with City Messenger Air Express of Hollywood, California. We are, therefore, notifying you as of this date, January 10, 1954, we will not be responsible for any further credit issued by United Air Lines to City Messenger Air Express of Hollywood, California.

"We do wish to thank United Air Lines for the courtesy extended City Bonded Messenger & Trucking Service.

"Should our company desire credit in the future, we
801 will again call on United Air Lines."

Signed: "City Messenger & Trucking Service.
"Irving Mansfield, President."

To the best of my recollection there was no statement made to me or to my company concerning the financial responsibility of the plaintiff by the defendant.

802 *Cross Examination by Mr. Cohen.*

The credit office for the entire operations of the United Air Lines is located at 5659 South Cicero Avenue, Chicago. I would like to qualify that our local air freight offices do make credit decisions based on standards which we issue to them from Chicago here. When any question arises as to policy, they refer it to me. I do not know whether or not Mr. Mansfield in this conversation of August 22, 1954, was specifically asked by me to guarantee the credit of the plaintiff. I kept no record of that conversation. I only have the presumption of what might
804 have happened. There are some telegrams in here from our own people in Los Angeles, where there was evidently some possible request, between the plaintiff and our office, as to why we had not advanced them credit.
805 I don't believe I had a conversation with Mr. Irving Mansfield on January 10, 1955. My records do not

indicate that I had sent a letter to Mr. Mansfield and the defendant corporation on that date. I received a letter on the 10th from the defendant corporation.

807 ROSE SIEGEL, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

808 *Direct Examination by Mr. Mullin.*

My name is Rose Siegel. My present address is 1065 West Hollywood, Chicago, Illinois. I am a dispatcher in charge of the Prudential office of City Bonded Messenger Service. I have been engaged in that position since the opening of the Prudential office in November of 1956.

809 Prior to that I was employed at the City Bonded Messenger Service at 193 North LaSalle Street, about 6 years. I was bookkeeper and part-time dispatcher.

I am acquainted with the plaintiff in this case, City Messenger of Hollywood, Inc., doing business as City Messenger Air Express. I am also acquainted with its officers. I am a sister-in-law to Ben Fullman and Aunt of Sidney B. and Norvin Fullman. I am not related to any of the officers of the defendants.

810 Referring back to the time that I was employed in the office of the defendant on LaSalle Street, my desk was in the back bookkeeping office on the lower floor. For dispatching, I was in the front office at the dispatch

811 desk. Mr. Mansfield was in the office in April, 1954. During that month I believe he took a trip to New York. He informed us of his whereabouts. He was going to visit the office of the City Messenger of Hollywood in New

813 York City. After he returned, there were preparations made for a new type of business. Mr. Mansfield explained the operation that we were going to go into. He

814 explained the pickups and deliveries that we handled from the airport, and part of the new division that we were going to go into. I know there was the printed matter that we ordered and he filled out a sample form for us to follow and instructed us as to the way to handle it, and how to write it up when the calls were to come in, and the pickups and deliveries on the other end and how to contact the different agencies that they had set up, to continue with the deliveries. The printed forms were ordered
815 from Uarco. We called the printed form CMAX air bill. It looks like Plaintiff's Exhibit 1. I did not prepare the form. I merely placed orders on them.
816 I did not see the copy of the form before it was printed.

817 I know the volume of business that is transacted by the City Bonded Messenger, the defendant in this case. It varies from month to month. We have peak months and slow months. During a peak month in 1954 it was $35,000.00, and during other than a peak month
818 it was about $30,000.00. I am speaking of 1954. I don't know what it was in 1956. I was not the bookkeeper at the time. I took a leave of absence in 1955. In 1955 I would say about $33,000.00 or $35,000.00. It is a matter of 2 or 3 on each side.

I know that the defendants handled business for
819 Emery Air Freight Forwarders. I don't recall the exact date when they started to do business with Emery Air Freight. It was sometime in 1955. I didn't witness any meetings with any of the officials of Emery Air Freight in our office. All the contacts I ever had were phone calls. I answered a couple of phone calls
820 from some representative of Emery Air Freight. Mr. Mansfield wasn't in the office at the time and I answered the phone. They asked me if I could quote rates

and I told them Mr. Mansfield would be the one to do that, and they left a phone number. I don't recall the name of the gentleman who called. That was in the spring of 1955. I don't recall any conversations or any phone calls prior to that with Emery Air Freight. I would like to
821 correct my previous statement, I think it was in the spring of 1954.

822 I recall visits in my home by the officers of the plaintiff. Sidney Fullman stayed with me. Elliott Fullman
823 visited my home in the early part of December, 1954. Elliott Fullman drove me home and he came upstairs to visit and see my children. I invited him to dinner.
824 He questioned the assets of Mr. Mansfield of City Bonded Messenger Service and asked me what Miss Lombard was making as a salary, and I told him that I didn't know as I wasn't in the payroll department. He stated a figure and I said, "I imagine that is it." He said, "Well when we get in there we will have to get rid of her. She is overpaid." I asked him after 17 years of service? and he said, "Yes, that is just it. She has been there too long." Then I said, "I guess you will be
825 getting rid of me?" and he said, "No, we can still use your services." That occurred in December of 1954, before Christmas.

In the beginning of January about the 5th or 6th, 1955, Mr. Sidney Fullman came into the office and told me that he was driving his brother's station wagon back to New York. Elliott Fullman had left for New York and left his station wagon behind, and he came in to drive it back to New York, and he was leaving the next day, and he asked if I knew of a place where he could stay, and I said
826 he could stay at our home provided he didn't wake us up, because he had to leave at 3:00 o'clock in the morning, and the next morning he was still there, and

827 he stayed a month. There were many conversations. They are kind of muddled in my mind at the present time. There was more conversation in the office than in my home after that. Mr. Mansfield of City Bonded Messenger Service was severing his connections with them, and he asked Mr. Sidney Fullman about paying the bill, and Mr. Sidney Fullman said he didn't like the way the bill was presented, that he would like us to itemize that and put all items on a big sheet, and we don't ordinarily do that in our bookkeeping department, but he proceeded to show us how he wanted it, and it took me six weeks
828 to set it up. The Telephone Company had to be called, and they gave me an itemized list of every telephone call, and whether it was collect or not, and where, and we presented it. I believe it was presented to the Fullmans. I started working on that. That was about the 6th, and it took me about three weeks thereafter to work on it. He helped me with a few, to show me how to set it up, but an argument happened between Miss Lombard and Mr. Sidney Fullman because he questioned every item that was put on the draft, and there was six months, and sometimes as many as 20 or 25 calls a day, and each one of the calls would have maybe ten to twelve entries, and each one was questioned, and at that rate I thought I would never finish it. I recall what was represented on
829 that big sheet. For example, we would list the air line it came into, like Eastern Airline, and the freight manifest or air bill number of the air line, and give then the CMAX air bill number and sometimes there would be as many as 10 air bills on that one shipment, and each one would have to be listed separately, and then our delivery charges for picking it up, and then our charges such as transhipments. There would be sometimes 10

CMAX air bills, really going to different cities, and we would have to make phone calls or telegrams or have other "on" charges such as cab companies or delivery agencies in the respective towns where it was going to, and we
830 would have to list the telegraph charges or the Western Union charges, rather, and the "on" charges of whatever company delivered it at the other end. I would like to list our check number and the amount of money that was paid to the company for our "on" charges for the City Messenger Air Express.

831 By Mr. Mullin: Q. Who paid them?

By Mr. Cohen: I object.

By the Witness: A City Bonded Messenger.

By the Court: If anyone did.

By the Witness: City Bonded Messenger Service.

By Mr. Mullin: Q. Do you recall what the total was?

By Mr. Cohen: Objection. If your Honor please, counsel here has become involved in, as we advised the Court earlier, in litigation that was pending in the Municipal Court of Chicago and which has been settled.

By Mr. Mullin: I am trying to prove damages, your Honor, and how much was expended by this company on behalf of City Air Express.

By Mr. Cohen: If the Court please, there was a settlement of all the issues pending in the Municipal Court of Chicago, and those issues pending in the Municipal
832 Court of Chicago were an allegation on the part of the defendants here against the plaintiff for rent, for services rendered and for moneys advanced and for certain printing bills, Carco bills.

Now, if your Honor please, at the time this matter came up on February 8th we had a day-long trial. Subsequent to that, about 3:00 or 4:00 o'clock that afternoon, we went into Judge Koza's chambers and entered into a compromise settlement of those issues.

Now, that particular matter is settled.

By Mr. Mullin: Has that been consummated?

By Mr. Cohen: The case has been dismissed, and there was a motion entered and continued until Friday in regard to that particular case. Yesterday I was unable to go before Judge Koza at 2:00 o'clock, and therefore that is all I can tell the Court.

833 By Mr. Mullin: Your Honor, I was not in that case. I did attend during the trial or part of the trial, but I don't know what happened subsequently. I do know there was an attempt to settle it. I do know also there has been no settlement or exchange of release for moneys.

By the Court: Well, proceed.

By Mr. Mullin: Q. Proceed.

By Mr. Cohen: If your Honor please, I will plead this matter has been decided in that case, and I certainly think it is imposing upon this Court and confusing all the issues to have any material that is concerned in that matter heard in this case.

By the Court: Your opponent just told me it has been settled. Overruled.

By Mr. Cohen: It has been settled.

By the Court: Overruled.

By Mr. Mullin: Q. Go ahead, Miss Siegel.

By the Witness: What was the question?

(Thereupon the question was read by the Reporter as follows: Q. "Do you recall what the total was?")

834 By the Witness: A. $1500.00, and I don't remember the exact amount, but I believe it was $1569.00 or something.

By Mr. Mullin: Q. What was that?

A. About $1569.00 or 79, I don't remember the exact last two figures, but it was 1500 and some odd dollars.

Q. You say the original was tendered to the plaintiff, the original of this accounting sheet, is that true?

A. As far as I know, yes.

Q. Do you have a copy or do the defendants have a copy of that?

A. Yes. You mean the large graph sheet, or are you referring to each order?

• • • •

836 By Mr. Cohen: Well, let me advise the Court that my clients advise me none was ever tendered to them, and therefore they do not have one.

By the Court: Put them on the stand and let them testify.

By Mr. Cohen: At this moment?

By the Court: Yes, let them swear to it. They are ordered to produce the document.

By Mr. Cohen: Mr. Fullman, will you stand before the Court here?

837 (Whereupon Mr. Sidney B. Fullman approached the bench.)

By Mr. Cohen: Mr. Fullman, you have been sworn here previous to this time?

By Mr. Sidney B. Fullman: I have.

By Mr. Cohen: You have heard the testimony that Rose Siegel has given that a graph sheet was tendered to the City Messenger of Hollywood, doing business as City Messenger Air Express?

By Mr. Sidney B. Fullman: I heard that testimony.

By Mr. Cohen: Was such a document ever tendered to you or any officer of the plaintiff corporation?

By Mr. Sidney B. Fullman: Definitely not.

By Mr. Cohen: You state this of your own knowledge?

By Mr. Sidney B. Fullman: That is one of the reasons I instituted the lawsuit, because they wouldn't give me a statement of charges, of what was expended or what
838 I owed them. They would not give me any information

at all, and it led to my suspicions of diversion and something wrong.

By Mr. Cohen: Is there anything further?

By Mr. Mullin: Yes.

Was there any document whatsoever submitted to you at that time, stating the amount that was due to the defendants in this case from you?

By Mr. Sidney B. Fullman: In April of 1956, long after this litigation started, I received a Recordak film, a Recordak film of alleged charges and billings that City Bonded Messenger & Trucking Service alleged I owed them. This was the only time I ever received any billing at all.

By Mr. Mullin: What was the amount or total of that?

By Mr. Cohen: Well, counsel, I think you should ask first whether or not there was any total.

By the Court: Well, produce the paper, like I said.

By Mr. Cohen: Mr. Sidney Fullman has a Recordak
839 film, and he has broken down into months and clipped together facsimiles of material appearing in the Recordak film. The tapes and other papers are his own work sheets or work material.

Is that correct, Mr. Fullman?

By Mr. Sidney B. Fullman: That is correct.

By Mr. Mullin: Based on those tapes you ran off, what was the total of all those bills?

By Mr. Cohen: If your Honor please, I object to this line of questioning, for only one reason, sir; that the alleged amount due and owing was litigated in the Municipal Court of Chicago.

By the Court: Overruled.

840 By Mr. Sidney B. Fullman: Can I answer the question, your Honor?

By the Court: Yes, answer the question.

By Mr. Sidney B. Fullman: All right.

By Mr. Mullin: Yes.

By Mr. Sidney B. Fullman: The total, according to our figures, came to approximately $560.00. According to the figures presented by the defendant City Bonded Messenger & Trucking Company, who were the plaintiffs in the other action, the Municipal Court action, their figures came to approximately $1500.00.

By the Witness: May I clarify that?

By the Court: What?

By the Witness: May I clarify that?

By the Court: Yes.

By the Witness: The $500.00 was delivery charges City Bonded Messenger Service, and the other charges were advances we made for freight shipments.

* * *

841 By Mr. Cohen: What is the ruling?

By the Court: You produce that.

By Mr. Cohen: We have produced the Recordak film.

By the Court: Where does the Recordak film come from?

By Mr. Sidney B. Fullman: Can I answer that?

By the Court: Yes.

By Mr. Sidney B. Fullman: This was sent to me by mail from the Eastman Kodak on or about April 15, 1956, and was produced at the behest of counsel for the defendant in this action, because we had requested it, simply insisted upon it, and they sent it to us, and we received it in the mail in April, 1956.

By the Court: Very well.

The $500.00 was what, Madam?

By the Witness: For the messenger delivery service of City Bonded Messenger Service performed in the 842 ground operation of the air forwarding.

By the Court: What was the rest of it?

By the Witness: Advances we made.

By the Court: What were the other amounts?

By the Witness: Beg pardon?

By the Court: What were the other amounts?

By the Witness: The balance was $500.00 and I don't know the exact amount, but the other would be a thousand dollars, and that is substantiated by receipts from the different companies.

By the Court: The $500.00 plus was charges for messenger service?

By the Witness: For six months.

By the Court: By City Bonded Messenger?

By the Witness: Yes, sir.

By the Court: And the thousand dollars?

By the Witness: Advances made.

By the Court: Advances made by City Bonded Messenger?

By the Witness: That's right.

By the Court: On behalf of?

By the Witness: Air freight forwarding.

By the Court: Air freight forwarding?

843 By the Witness: Yes, sir.

* * *

By Mr. Mullin: I move to introduce into evidence the Recordak film marked Defendants' Exhibit 54 for identification, representing these bills and charges.

By the Court: Any objection?

By Mr. Cohen: Yes, I object.

By the Court: What is the ground of your objection?

By Mr. Cohen: The sum and substance of this film is to show the bills and charges and other matters which relate to the case in the Municipal Court of Chicago, which was settled, and in which a release exists.

844 By the Court: You have not pleaded any release?

By Mr. Cohen: Yes, I am pleading the release.

By the Court: That is no way to plead a release. Objection overruled.

By Mr. Mullin: It may be received, your Honor?

By the Court: It may be received.

(Said film, so offered and received in evidence, was marked Defendants' Exhibit 54.)

By Mr. Mullin:

Q. You testified that the defendant was doing business with Emery Air Freight Forwarders. Do you know how much revenue is received from Emery Air Freight Forwarders?

A. No, I do not, sir.

Q. You do not?

A. No.

845 *Cross Examination by Mr. Cohen.*

Elliott was a visitor at my home. I wouldn't know whether he visited me and stayed at my house during the year of either '46, '47 or '48. They did visit, but you are going back quite a few years, and they would stop by whenever they were traveling back and forth and coming into Chicago. I remember one visit where they stayed quite a few weeks in the summer. At that time I wasn't working. The one I think you are referring to is 1947, and I was in Florida at the time. He did not stay at my home.

846 Elliott did not stay at my house. I did not testify Elliott stayed at my house. He visited me. I believe he stayed at the Shoreham. This was in early December, 1954. We both lived north and he drove north and I drove with him. I think Sidney Fullman came to the office of City Bonded Messenger the first time in the early part of January, 1955. I wouldn't have any way of knowing whether he was there before that.

847 I wasn't in the office at all times. I was in the office on the 5th or 6th of January, 1955. He was in the office on the 5th and 6th. He wasn't thrown out bodily. He was not thrown out at all. The graph sheet

that I prepared was not personally presented to Mr.
848 Fullman by me. I was the bookkeeper and was situated at 193 North LaSalle during the period of May, 1954, to January of 1955. I had occasion to answer telephones during that period of time. I had occasion to answer the telephone number of Randolph 6-2391. City
849 Bonded Messenger is now handling Emery Air Freight. They are handling other air freight accounts. I don't know all the names. I am no longer bookkeeper there. I am at another office. I do not know when they started handling these other accounts.

850 ABRAHAM BITTMAN, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

851 *Direct Examination by Mr. Mullin.*

My name is Abraham Bittman and I reside at 6015 North Richmond Street, Chicago, Illinois. I am a certified public accountant. I am a member of the Illinois bar. I have been practicing as a C.P.A. since January of 1952. I have been a member of the Illinois bar since January of 1955. I
852 am acquainted with the defendants in this lawsuit. I have no relationship to the defendants in this lawsuit. I am employed by the defendants as their accountant. They are one of my accounts. I have been their accountant since June of 1955. I have had occasion to examine the books and records of the defendant. The books of the corporation are kept on a fiscal year ending September 30th of
853 1956. The gross volume during the year of 1956 for this defendant would be $345,301.00. That is the gross sales during the year 1956, the fiscal year
855 ending September. I examined the books and records. I prepared a tax return for the fiscal year September 30, 1955. The gross sales for that year were $299,000. The

books and records that I examined go back to 1952. I examined the retained copies of the partnership income tax returns going back to 1946. The gross total sales since 1946, in the aggregate is $1,610,000, that is from 1946
856 through September 30, 1956. I do not recall seeing an account there involving the Emery Air Freight. The amount expended by the defendants in advertising during the fiscal year ending September 30, 1956, I would say would be approximately $7,000.00, and during the year ending 1955 about $5,500, and during the year ending 1954 about the same amount $5,500.00.

859 WILLARD GILBERT, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Mullin.

860 My name is Willard Gilbert. My home address is 2352 East 72nd Street, Chicago, Illinois. I am a sales manager for City Bonded Messenger & Trucking Service. I have been sales manager for the defendant corporation for four years. I am acquainted with the accounts and services of the defendant corporation. I am acquainted with the plaintiff in this case. I was engaged in obtaining sales during the period of May, 1954, to January,
861 1955, for City Bonded Messenger Service and City Air Express. We were soliciting the City Air Express business as of May, 1954 up until January, 1955, and we were introducing the air express business to all, most all of our accounts that were interested in handling air freight. We also left display cards explaining the different services on the City Air Express at that time, with the various accounts that we contacted. I personally contacted these accounts. Mr. Elliott Fullman also accompanied me. I had taken him around to various ac-

counts, on City Air Express only. In the company of
862 Mr. Elliott Fullman I contacted Avon Products, the Kraft Foods, Pfizer Pharmaceutical, CBS Broadcasting Company and there are probably others, but I just can't remember at this time. Prior to my contacting them during this period, they were my customers. At the present time, we have Kraft Foods on messenger service, occasional messenger service from Kraft Foods, and we have some of the CBS messenger service, and that's about all, and I mentioned all the services we are
863 getting at this time out of those companies. We are still getting occasional messenger service from Kraft Foods at this time. Prior to this time, I would use the same word to characterize the type of service. It was occasional deliveries on messenger service, before May, 1954. It is still about the same, occasional. As to the others,
864 Avon has moved out of town. They have moved to Morton Grove. We are not getting any business on messenger service from Avon since they moved to Morton Grove. We are not getting Charles Pfizer either. It was all air express at the time we had contact with them. I am familiar with the account of Emery Air Freight. Regarding the Emery Air Freight account, Mr. Mansfield, about July of '54, had made some trips out to Emery, to secure their air freight business. He had made several trips out there, probably in July and August, and then
865 it was turned over to me for further follow up. I had contacted Emery in February of 1955 and told the Emery Air Freight Company that we were interested in taking over the entire operation of the air freight for city delivery, with pickup and delivery, and we were interested in that because they had five rental trucks going and we knew our operation could fit in very nicely into
866 their setup. I went out to Emery. I had phoned Mr.

Mansfield in February and asked him if he would come out to the office of the Emery Air Freight and discuss it further. He had done so and we had talked to Mr. Bruin and Mr. Williams of the Emery Air Freight. Due to the fact that we were handling another air freight's business, which was City Air Express, they weren't fully convinced that we could handle that operation to their satisfaction. They had told us that they had discontinued that type of operation. We had another meeting with Mr. Williams, Mr. Bruin and Mr. Connors and, in March of 1955, we started operations with Emery. They told us then, "O.K., we are going to feel you out and see how you can go with us and see what type of service you can render and if we find that you are capable of handling our deliveries like we want them, we will eventually turn over our entire operation to you."

867 During the conversation, we mentioned putting in a dispatcher to dispatch the air freight. It was agreed then that they would carry on with our company to take on their deliveries and the pickup and deliveries of their freight and give us a portion of that business, which averaged between three and five hundred dollars

868 per week. That represents these pickup and delivery services for Emery only. There are no payouts of any kind, just pickups and deliveries for Emery freight. We are not required to make any payouts for them. I am familiar with the accounts.

We have an account with a governmental agency. We have the Internal Revenue Service. We are handling deliveries for them. We pick up whatever information they have at the various offices of the Internal Revenue and bring it in to 22 West Madison Street, the general office headquarters. It is going on its second year, as I recall,

that we have been doing that. I am almost sure
869 it is over a year and it is going into its second year.
We have an agreement and a contract.

By Mr. Mullin: The defendants rest, Your Honor. At this time, though, I would like to make a motion to be permitted to amend our complaint and counterclaims to conform with the proofs here.

* * *

870 By the Court: What do you have in mind?

By Mr. Mullin: I think we have made out a case of breach of contract. We have a count for fraud and deceit but not for breach of contract, and I would like to put in such count.

By the Court: You may have leave.

By Mr. Mullin: Thank you, Your Honor.

By the Court: When will you do that?

By Mr. Mullin: I will have that tomorrow.

871 A. J. SCHUDE, called as a witness herein on behalf of the plaintiff, in rebuttal, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Cohen.

872 My name is A. J. Schude. My first name is Andrew. My middle initial is "J" for John. I reside at 2934 North Harding, Chicago, Illinois. I am a sales manager for C. H. Hansen Company. They are situated at 303 west Erie Street. I have been employed by that com-
873 pany for 35 years. I have served in the capacity as sales manager for 25 years. I am not too familiar with the defendant corporation, City Bonded Messenger & Trucking Service; only that it is one of our accounts, is all. We manufacture a great lot of things. We make

name plates, rubber stamps, steel dies, badges, and so forth. We have taken an order from the defendant, City Bonded Messenger & Trucking Service. I guess it was in 1954. I have the books and records of my company
874 right here. This is an order dated June 17, 1954, on the letterhead of City Bonded Messenger & Truck-
875 ing Service. It is signed by Irving Mansfield. According to this order, we had made 50 badges. The design of the badge was our own design and their copy. That is, what I mean by that, their pattern—it has been lettered "City Bonded Messenger & Trucking Service." Defendants' Exhibit 41, a badge saying "City Bonded Messenger & Trucking Service", is our design. It looks
876 like our work. It is our design badge, in other words, the cutout. This is a stock pattern of ours. The lettering has been produced by us as per copy herewith. That is part of the production of the badge. So far as I can see, it is identical with the badge, with the exception that there is no number on that. That was the first order in 1954. The defendant corporation reordered 26 later in 1956. We have no record of the defendant corporation reorder-
877 ing any badges after that. We did not, not that I know of, produce any badges prior to the first order.

Cross-Examination by Mr. Silverman.

I would say that Defendants' Exhibit 41 is a badge manufactured by our company. I am not making a comparison between papers in my hand and the badge. I took this order and I know what I made. I would
878 say this is our badge. It could be possible that there were other badges made by other companies. I can't prove the identification on that badge. There is more than one badge manufacturer in the country. But I would say that this is our badge. No, it is not based upon a deduction upon the papers I have and my recollection of the

transaction. I still have another little drawing here that shows you the actual size badge. Someone else could have made the identical badge. Just like we can make you coins, the same as they do in Washington. We could do that right here in Chicago in our plant. There isn't anything that you can't reproduce. There is no identifying mark on that badge to tell who made it. The records
879 I hold in my hand came from C. H. Hansen Company and there are invoices on them right here. We have a bookkeeper. We have a filing clerk. We have files. Our office makes all the entries in the books and records. I took these out of our files. I personally took them out of the files. I was not in charge of these records, but I was in charge of this order when I first made the first lot. We have the copy that was on the badge or badges that our company made right here. We prepared that. We
880 prepared this sketch from the copy we got from City Bonded, whoever they are.

881 *Redirect Examination by Mr. Cohen.*

In the last order we made for the defendant corporation contained badges numbered from 100 to 125. The date of that order was April 2nd, I believe, 1956.

BENJAMIN FULLMAN, called as a witness herein on behalf of the plaintiff, in rebuttal, having been previously duly sworn, resumed the stand and testified further as follows:

882 *Direct Examination by Mr. Cohen.*

883 I didn't have a face-to-face conference with Mr. Irving Mansfield on December 29, 1954. I didn't have any face-to-face conference with him on any day other than that in Los Angeles, California. From the time I saw him in September, I didn't see him again until January when I came to Chicago.

I have received Plaintiff's Exhibit 24 which is a let-
884 ter dated 12-29-54 addressed to "Dear Ben" and signed "Yours, Irving," on the letterhead of City Bonded Messenger & Trucking Service Inc. I have sent Plaintiff's Exhibit 25 which is a letter dated January 3, 1955, addressed "Dear Irving" in typewriting and signed just "Sincerely". I received Plaintiff's Exhibit 26 which is a letter dated January 6th on the letterhead of City Bonded Messenger & Trucking Service, Inc., addressed "Dear Ben" and signed on the reverse side "Yours, Irving." I received those two letters and mailed the original of Plaintiff's Exhibit 25 on or about the date that they bear. I had just returned from a vacation over New Year's and opened up my mail and there was this letter from Irving and it was dated on the 29th. At least, the date of the letter was the 29th. So, I sat down and wrote him a reply. The date I got it was January 3rd and
885 I wrote him a reply right away. In reply to the letter I wrote, he wrote me another a couple of days later, dated January 6th. I was in Los Angeles at the time. Mr. Irving Mansfield wasn't there at this time, so far as I was concerned. I didn't see him. I did not play a tape record-
ing to Mr. Mansfield in my office in Los Angeles on
886 December 29, 1954. There was a meeting between Mr. Irving Mansfield and myself during the month of September, 1954, in Los Angeles, California. It must have been the first or second week of the month. I don't know the exact date. It was around the Jewish holiday, between Labor Day and the Jewish holidays; and I know he told me at that time he was going to worship, so I know it was on that occasion. It was the result of a dis-
887 cussion we were having on the possibility of this merger, and Mr. Mansfield informed me, "I am not interested in making any investment in City Messenger of Hollywood by turning my business into yours as a merg-

er. I will only be interested in buying a half interest in City Messenger Air Express. How much is it worth?" I said, "That is a pretty tough figure to set up, what the value of the permit is, because there is no definite value, but if you ask me a figure, it is worth $100,000.00." He spoke, "That is ridiculous. How much did you invest in getting this permit?" Actually we invested $12,500.00 in expense money. Mr. Mansfield: "That's all we would be interested in investing, and there is no possibility of an investment," and Mr. Mansfield went on his way, and that is the last I saw of him until January. He continued serving us as a pickup and delivery agent all during this time interval.

I know who the owners of the stock of City
888 Messenger of Hollywood are. Elliott Fullman has
20 shares; Sidney Fullman has 20 shares; Norvin Fullman has 20 shares; Beatrice N. Fullman has 39 shares, and I have one share. That is all the shares there are.

889 Plaintiff's Exhibits 24 and 26 received in evidence.

890 *Cross Examination by Mr. Mullin.*

I recall the existence of a tape recording of conversations, either telephone or direct, that I had with my sons. I don't think that tape recording is in existence today. It was made sometime in 1954. It was taped off a telephone conversation in New York. I believe Elliott was involved in the conversation which was recorded on tape. I don't
think there were any other sons involved. I don't
891 remember a personal, face-to-face conversation with Mr. Mansfield in Los Angeles on approximately November 9th or 10th of 1954. As a matter of fact, as I said before, I saw him in September and then the next time I saw him was in October, or rather, January, when I came here. The only meeting Mr. Irving Mansfield and his

brother, Elias Mansfield, had was one time in Septem-
892 ber. I talked to his brother several times on the tele-
phone. I don't recall any other personal meeting after that date. The tape recording was not played at a meeting. I played it in the telephone. That tape recording can be plugged in the telephone and played and you can listen to the telephone and hear it. He called me and asked what was going on and I said, "Listen, I can save you trouble. You can listen to this on the telephone." That was sometime in October, maybe the first
week. It was two or three weeks after Mr. Mans-
893 field left. I am referring now to the meeting I had
894 with him, in September, 1954. As to the tape recording that I played to Mr. Mansfield, Elliott had called me and asked what the status of these negotiations were, and I informed him that Mr. Mansfield is not interested in buying, rather, merging the two companies, but he wants to buy a half interest in the City Messenger Air Express, and I told him he wanted to know the value of the company, what it was, and I told him it was hard to state, but at least the permit was worth $100,000.00, and he informed me, "What did Mr. Mansfield say about it?" and I said, "He said it was ridiculous, that he
895 wouldn't make such an investment: that the only investment he would make or that he would be willing to make would be a small investment in City Messenger Air Express where he would get half of it and the rest of the group would get the other half. Elliott replied, "We wouldn't care about that, not interested unless he can come up with something better than that. Forget about it." The whole conversation took two or three minutes.

897 SIDNEY B. FULLMAN, called as a witness on behalf of the plaintiff, in rebuttal, having been previously duly sworn and examined, testified further as follows:

898 *Direct Examination by Mr. Cohen.*

Our air freight pickup and delivery drivers use a badge to identify them. We first started using this badge on about the 1st of October of 1956. Our company in the City of Chicago did not use badges prior to that date.

899 Plaintiff's Exhibit 27, which purports to be a badge, in essence being wings with a circle, bearing the imprint of a plane and a terminal and bearing the letters "CMAX Nationwide Air Freight," is the badge that our company has its employees wear. That is the badge they have used since October, 1956. It is placed on the cap just above the visor. All our pickup and delivery drivers wear that particular badge to identify them. The employees in the City of Chicago have never used any

900 other type of badges or emblems.

Plaintiff's Exhibit 27 received in evidence.

901 *Cross Examination by Mr. Mullin.*

As I recall, we began to use this badge in October, 1956. Prior to that, the badge was never worn by our employees. There was no other identification whatsoever. One of the vehicles operated by Mr. Baker has the lettering "CMAX". That's all it says on it. The word "City" appears

902 on no vehicles, clothing or any identification. That is the same badge used by our pickup and delivery drivers. Our company does operate a messenger service in New York and California. The messengers in those cities don't wear any badges. They do wear identifica-

903 tion. They wear a celluloid card affair that identifies the company for which they work. It would be similar

in looks to a defense plant badge. It pins on their clothing. The word "City" written in script does appear thereon. I couldn't tell you the material of which it is made. I don't know what particular metal this is made of. I would say the coloring of "CMAX nationwide air freight" is tan. It looks like tan to me.

The insignia, the little messenger boy and the word "City" in script, appearing on Defendants' Exhibit
904 41 comprising the badge used by the defendant, does not appear on any of our identification in Chicago that the messengers wear.

Redirect Examination by Mr. Cohen.

By identification I mean the badge.

By Mr. Cohen: The plaintiff rests.

[March 1, 1957]

909 IRVING MANSFIELD, called as a witness on behalf of the defendants, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination by Mr. Mullin.

911 I am Irving Mansfield. I have a check in my hand dated December 27, 1955, made out to the American Air Lines for $239.91. It represents a trip I took to Los Angeles to see the Rose Bowl game in 1955. That is Defendants' Exhibit 55. The American Air Lines' endorsement, with my ticket number and my address, 5210 Blackstone, and my telephone number appear on the back. This evidently is what I was confused with when I said I was out in Los Angeles in 1954. It was in '55, and evidently when talking to my brother we were confused as to this being the date of 1954. In reality it was 1955. I am referring to the Rose Bowl game which took place
912 in January, 1956, and I left the following day. This is a check dated October 14, 1954, made out to the

United Air Lines for $239.91, and represents a round trip to Los Angeles. They have their endorsement on the back of it, "United Air Lines" with flight 731 to Los Angeles on the 15th of October, 1954. That is the time that we were confused with the time I was out there in Los Angeles and visited Ben at his office and heard the tape recording. Here is a charge from the Diners' Club, or charge from the Ambassador Hotel, October 17, 1954, for $54.00. This is a charge for the House of Murphy in Los Angeles, and another for the Barclay also in
913 Los Angeles, dated October, 1954, and the first part of November. This is a check dated in October, 1954, which I made out to myself for $500.00 for this trip, and it was cashed by my brother, and bears the stamp of the Bank of Los Angeles and the Federal Reserve. The date of the second meeting with Ben Fullman, at which time my brother and I heard this tape recording, would have
914 to be subsequent to October 15th, to around November 1, when I was there. I was in error when I placed it at the end of December or first of January.

Defendants' Exhibits 54, 55, 56 and 57 received in evidence.

942 CERTIFICATE

I hereby certify that the above and foregoing transcript comprising pages numbered consecutively from 1 to 941 is a full, true and accurate transcript of the original shorthand notes of all the proceedings had upon the hearing of the above-entitled cause, beginning on February 15, 1957 and concluding on March 14, 1957, before the Honorable John P. Barnes, Chief Justice of said Court.

s/ Roy E. Fuller
Official Court Reporter
United States District Court
Northern District of Illinois

May 16, 1957.

IMPORTANT { YOU ARE MAKING THE ORIGINAL AND 5 CARBON COPIES

E-Z-OUT
REG. U. S. PAT. OFF.

BEAR DOWN AND **PRINT** ALL CHARACTERS.

CITY MESSENGER OF HOLLYWOOD INC. D/B/A

CITY MESSENGER AIR EXPRESS

FORWARDER AIRBILL NON NEGOTIABLE

STATION

It is mutually agreed that the goods herein described are accepted in apparent good order (except as noted) for transportation as specified herein, subject to governing rules, classifications and tariffs, in effect as of the date hereof, which are filed in accordance with law. Said rules, classifications and tariffs, copies of which are available for inspection, are hereby incorporated into and made part of this contract.

STAR SPECIAL ☐

DATE CMAX No. 09505

FROM

CONSIGNOR

STREET ADDRESS CITY

ACCOUNT OF DEPT. OR ORDER NO.

SIGNED FOR CONSIGNOR PER

TO

CONSIGNEE

STREET ADDRESS

CITY COUNTY STATE

CHARGES (CHECK ONE) COLLECT ☐ PREPAID ☐

NO. PCS.	DESCRIPTION	WEIGHT	RATE	SUMMARY OF CHARGES	PREPAID CHARGES		COLLECT CHARGES	
				WEIGHT RATE CHARGES				
				ADVANCES				
				EXCESS VALUE TRANSP. CHARGES				
				SUB TOTAL				
				TRANSPORTATION TAX				
				SHIPPER'S C.O.D.	X X	XX		
				C. O. D. FEE				
				TOTAL CHARGES				

DIMENSIONS ____ X ____ X ____ IN. ____ CU. IN. DIMENSIONAL WEIGHT

DECLARED VALUE $

PICKUP ADDRESS MAY 9 - 1957 TIME

A/L A/B NO. DEL'D.

AT ..... O'CLOCK 55673

RECEIVED BY ROY H. JOHNSON, CLERK

CITY MESSENGER AIR EXPRESS

THIS IS YOUR INVOICE - NO STATEMENT WILL BE SENT

FILED

Plaintiff's Exhibit 1.

PLAINTIFF'S EXHIBIT 1.

198

PLAINTIFF'S EXHIBIT 7.

Civil Aeronautics Board
Washington 25

Letter of Registration No. 163
Air Freight Forwarder

City Messenger of Hollywood, Inc.
d/b/a City Messenger Air Express
1414 Cole Place
Los Angeles 28, California

is hereby acknowledged to have duly registered with the Civil Aeronautics Board as an Air Freight Forwarder under the provisions of Part 296 of the Economic Regulations, relating to indirect air transportation of property only between places in the continental United States.

This Letter of Registration is not transferable and may be suspended, revoked or terminated in accordance with pertinent provisions of Part 296 of the Economic Regulations.

This is not a certificate of public convenience and necessity and is merely evidence of registration.

Issued: May 21, 1954

Effective: May 22, 1954

(Seal)

M. C. Mulligan
Secretary

PLAINTIFF'S EXHIBIT 10.

STATE OF CALIFORNIA
Office of the
Secretary of State

I, Frank M. Jordan, Secretary of State of the State of California, hereby certify:

That I have compared the annexed transcript with the Record on file in my office, of which it purports to be a copy, and that the same is a full, true and correct copy thereof.

In Witness Whereof, I hereunto set my hand and affix the Great Seal of the State of California, (Seal) at Sacramento, this 19th day of February, 1951.

Frank M. Jordan
Secretary of State
By Chris J. Hagert
Deputy

Articles of Incorporation
of
City Messenger of Hollywood

Know All Men by These Presents:

That we, the undersigned, all of whom are residents of the State of California, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of California, and we do hereby certify as follows:

First: That the name of the corporation shall be: City Messenger of Hollywood.

Second: That the purposes for which this corporation is formed are as follows:

(a) That said corporation shall primarily engage in a general messenger and delivery service.

(b) To purchase, take and lease, exchange or otherwise acquire any real or personal property, rights or privileges

convenient for any of the purposes of this business, and to purchase or acquire anything necessary or useful for the conduct of the business as above specified.

(c) To borrow or raise money for any purposes of the company and to secure the same and interest, or for any other purpose, to mortgage all or any part of the property corporeal or incorporeal rights or franchises of this company now owned or hereafter acquired, and to create, issue, draw and accept and negotiate bonds and mortgages, bills of exchange, promissory notes or other obligations or negotiable instruments.

(d) And further to do and perform and cause to be done or performed such, any and all of the acts and things above enumerated and any and all other acts and things insofar as the same may be incidental to or included in any or all of the general powers given, always provided on the grant of the foregoing enumerated powers is upon the express condition precedent, that the various powers as enumerated shall be exercised by the said company only in case the same are authorized to be exercised by the acts above recited under which said company is organized and the same shall be exercised by said company only in the manner and to the extent that the same may be authorized under the said acts above recited under which it was organized.

(e) To enter into, make, perform and carry out contracts of every kind and to engage in any lawful business without limitation or otherwise with any person, firm, association or corporation.

Third: That the principal office for the transaction of business of the corporation shall be 6512 Selma Avenue, Hollywood, Los Angeles County, California, or in such other place or places within said County as may be designated.

Fourth: That this corporation shall exist perpetually or until such time as it is dissolved voluntarily or by involuntary action.

Fifth: That the number of directors of this corporation shall be five and the number hereby fixed shall constitute the authorized number of directors until changed by amendment to the Articles of Incorporation, or by a by-law duly adopted by the shareholders, but in no event shall the number of directors of this corporation be less than three; that the names and addresses of the persons who are hereby appointed to act as the first directors and until their successors are elected are as follows:

Names	*Addresses*
Sidney Fullman	11160 Valley Spring Lane, North Hollywood, Calif.
Beatrice M. Fullman	11160 Valley Spring Lane, No. Hollywood, Calif.
Sam Chess	6512 Selma Avenue Hollywood, California
Norvin Fullman	11160 Valley Spring Lane, No. Hollywood, Calif.
Elliot Fullman	11160 Valley Spring Lane, No. Hollywood, Calif.

Sixth: This corporation is authorized to issue only one class of stock, to wit: Common of the total number of 100 shares with the aggregate par value of $10,000.00, the par value being $100.00 per share.

Sidney Fullman
Sam Chess
Norvin Fullman
Elliot Fullman
Beatrice M. Fullman

County of Los Angeles)
State of California) ss:

On this 29th day of December, 1950, before me, the undersigned, a Notary Public in and for the said County and State, personally appeared Sidney Fullman, Sam Chess, Norvin Fullman, Elliot Fullman and Beatrice M. Fullman, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand, and affixed my official seal the day and year first above written.

Max L. Grossman
Notary Public in and for said County and State.

(Notarial Seal)

DEFENDANTS' EXHIBIT 42.

THE ONLY NATIONAL MESSENGER SERVICE IN THE U.S.A.

City
BONDED
MESSENGER AND
TRUCKING SERVICE
The Better Standard of Messenger Service

RAndolph 6-6001

IN THE HEART OF THE LOOP

CHICAGO	NEW YORK	HOLLYWOOD	LOS ANGELES	BEVERLY HILLS
RAndolph 6-6001	MUrry Hill 5-1166	HO 4-1188	MU 8191	CR 50183

100 FINDINGS OF FACTS, CONCLUSIONS OF LAW AND FINAL JUDGMENT ORDER.

[Entered March 14, 1957]

Findings of Fact:

1. This is a suit for unfair competition brought by the Plaintiff, City Messenger of Hollywood, Inc., doing business under the tradename of City Messenger Air express against three corporate defendants and two individual defendants, as follows:

> City Bonded Messenger and Trucking Service, Inc., The Illinois Bell Telephone Company, The Reuben H. Donnelley Corporation, Irving Mansfield and Nadine Mansfield,

2. Defendants, City Bonded Messenger and Trucking Service Inc., Irving Mansfield and Nadine Mansfield,

101 counterclaimed for unfair competition, service mark infringement, fraud and deceit and breach of contract.

3. Subsequent to the filing of the complaint but prior to the trial of the issues, namely on October 5, 1956, Defendant, City Bonded Messenger and Trucking Service, Inc., filed articles of amendment changing its name to City Bonded Messenger Service and an additional new corporation City Bonded Trucking Company, Inc., was incorporated, said new corporation and said Defendant, now by change of name City Bonded Messenger Service, were

substituted for Defendant-Counter-Claimant, City Bonded Messenger and Trucking Service, Inc.

3. Defendants, Irving Mansfield and Nadine Mansfield, acted solely within the scope of their employment as employees and by motion were dismissed as Defendants from this case.

4. Defendants, Illinois Bell Telephone Company and the Reuben H. Donnelley Corporation have counter-claimed and cross-claimed for declaratory judgment, seeking an order from the Court concerning listings of the Plaintiff and the Defendants in both the Chicago Alphabetical telephone directory and the Chicago Classified telephone directory.

5. On April 29, 1955, the Court entered an order that both Plaintiff and Defendant be listed only under their respective corporate names and not under any assumed names, pending the further trial of the issues.

102 6. This Court has jurisdiction of the subject matter and parties involved.

7. Plaintiff, City Messenger of Hollywood, Inc., is a California Corporation doing business in the State of Illinois and having an office at 845 South Wabash Avenue, Chicago, Illinois. Defendants, City Bonded Messenger Service and City Bonded Trucking Company, Inc. are Illinois Corporations having their principal offices at 193 North LaSalle Street, Chicago, Illinois.

8. Defendants, City Bonded Messenger Service and City Bonded Trucking Company, Inc., and their predecessors in title, namely City Bonded Messenger and Trucking Service, Inc., a corporation, City Bonded Messenger and Trucking Service, a co-partnership comprising Irving Mansfield and Nadine Mansfield, and Irving Mansfield doing business as City Bonded Messenger Service, have continuously, openly and notoriously, since September 1942, engaged in the messenger and trucking business in the Chicago area, including Interstate Commerce

within a 50 mile radius in the State of Indiana under their said tradenames.

9. The tradename and style of the aforementioned Defendants and their predecessors in title are presently and continuously have been, since September, 1942, dominated by the word "City" and the phrases "City Messenger" and "City Bonded Messenger".

103 10. The aforementioned Defendants and their predecessors in title presently are, and for a long time prior to the acts herein complained of, have been the owners and have continuously used in connection with the sale, advertising and rendering of messenger and trucking services in Interstate Commerce, a service mark comprising the word "City" written in script with a caricature messenger boy running through the letter C, the illustration of a speeding automobile positioned above the letter Y and having the word "Bonded" displayed below the word "City".

11. The aforementioned mark was duly registered on the Principal Register in the United States Patent Office on July 26, 1955, Registration No. 609,732 and said Defendants are the legal and equitable owners of said service mark and registration and have the right to sue for infringement thereof.

12. Plaintiff was incorporated in the State of California under the corporate name, City Messenger of Hollywood, Inc., on or about February 19, 1951.

13. Plaintiff failed to establish a chain of title showing any predecessor or use by any predecessor of a tradename or a service mark dominated by the word "City" or the phrases "City Bonded Messenger" or "City Messenger" in the sale, advertising or rendering of any messenger or trucking service prior to the date of its incorporation.

104 14. Modern Delivery Service, a California corporation doing business under the tradenames City Messenger and Express Co., City Transportation Co., and City Messenger, filed a voluntary petition for bankruptcy in the United States District Court, Southern District of California, Central Division on July 15, 1948, was discharged January 9, 1952 with creditors receiving nothing on their claims; some of the principal officers of Plaintiff were principal officers in said Modern Delivery Service and had knowledge of said bankruptcy; and no purchase of any assets were made by Plaintiff or any of its officers from the Trustee in Bankruptcy of said Modern Delivery Service.

15. Plaintiff's corporate name, tradename and/or service marks are dominated by the word "City" and the phrase "City Messenger" and "City Bonded Messenger".

16. Plaintiff uses a service mark in connection with the sale, advertising and rendering of messenger service, trucking service which is substantially identical to Defendant's service mark.

17. Prior to January, 1955 Plaintiff did not maintain an office or any facilities or engage in or render any messenger, trucking or related services in the Chicago area or within a 50 mile radius of the City of Chicago.

18. During the latter part of 1953 and during 1954, Plaintiff through its officers, falsely and fraudulently rep-
105 resented to Defendant-Counter-Claimants that they were to join with it in the ownership and operation of an air freight forwarding business to be known as City Messenger Air Express, with Defendants taking charge of the operations of said business in Chicago, Illinois. Subsequently said Plaintiff, through its said officers continued to falsely and fraudulently represent that said air freight forwarding business had in fact been organized under said name, City Messenger Air Express,

with Defendant-Counter-Claimants as part-owners thereof, and said Plaintiff, through its officers proceeded to act accordingly as though said air freight forwarding business was in fact in existence and as though said Defendant-Counter-Claimants were in fact part-owners thereof, demanding that Defendants fulfill their duties and perform their alleged "part of the bargain".

19. In furtherance of said scheme, Plaintiff on May 18, 1954 falsely notified Defendant-Counter-Claimants that the Civil Aeronautics Board had approved, registered and issued to said new entity, City Messenger Air Express, authorization to engage in the air freight forwarding business, when in fact the authorization had been issued to Plaintiff.

20. Believing the aforementioned representations to be true and relying on the same, Defendant-Counter-Claimants fulfilled their duties and performed their alleged "part of the bargain" by expending large sums of
106 money in "pay-outs" while conducting the air freight forwarding business, extending credit to Plaintiff, guaranteeing the credit of Plaintiff to various suppliers of services used in the air freight forwarding business, including United Air Lines, Inc., Railway Express and Air Express Agency, Inc., and Western Union Co., Inc., by purchasing, at request of Plaintiff, large numbers of printed forms necessary for use in the air freight forwarding business, purchasing and furnishing office supplies, telephone service, office space, terminal facilities, equipment and personnel, circulating and introducing Plaintiff to its customers for the purpose of obtaining business therefrom, furnishing the ground operation portion of the air freight forwarding services, and abstaining from furnishing said ground operation services on behalf of competitive air freight forwarders, including Emery Air Freight Forwarding Co., with consequent loss of revenue therefrom.

21. The aforementioned representations were false and were known by the Plaintiff to be false at the time they were made, and were made with the intent to surreptitiously gain an entry in the Chicago area market, including Defendants' own customers and with the intent of trading on the good will of the Defendants, and indeed trading on said good will by engaging in and rendering messenger, trucking and related services in the Chicago area and between Illinois and Indiana under the confusingly similar tradenames of City Messenger of Hollywood, Inc., City Messenger Air Express and City Bonded Messenger, and using in connection with the sale, advertising and rendering of said services, a service mark substantially identical to Defendants' service mark. The aforementioned representations were further made by Plaintiff with the intent to induce Defendant-Counter-Claimants to act thereon, and with intent to flagrantly deceive and defraud Defendant-Counter-Claimants.

107

22. On or about September 7, 1954, Plaintiff entered into an oral contract with Defendant-Counter-Claimants for the sale of an undivided one-half interest of all the assets owned by and in the name of the Plaintiff, including the good will of the business and right to engage in the air freight forwarding business under Civil Aeronautics Board Letter of Registration No. 163, and subsequent thereto, Plaintiff breached said contract and failed and refused to perform the terms of said contract. Defendant-Counter-Claimants have done and performed all things by them to be performed under the terms of said contract.

23. Plaintiff has failed to prove that Defendants at any time diverted any shipments belonging to them to the own use of said Defendants or ever appropriated the proceeds of such shipments to their own use without accounting to the Plaintiff.

108 24. Plaintiff has failed to prove that Defendants ever engaged in unlawful, unfair or deceptive methods of competition against them, including specifically:

a. applying for and obtaining, without the knowledge and consent of the Plaintiff, of any telephone listing of any tradename belonging to Plaintiff, or fraudulently holding themselves out to be air shippers, or being in violation of any of the economic regulations of the Civil Aeronautics Board.

b. engaging in any false, fraudulent or deceptive advertising, including any advertising of City Messenger Air Express, without the consent or approval of the Plaintiff.

c. making any false representation to anybody concerning the credit or financial responsibilty of the Plaintiff.

Plaintiff has failed to prove any allegation of unfair competition alleged in its complaint.

25. Since January, 1955, Plaintiff has engaged in and rendered messenger services including, but not limited to, the ground operation of air freight forwarding services in direct competition with Defendant-Counter-Claimant in the Chicago area and in Interstate Commerce within a radius of 50 miles of the City of Chicago.

109 26. Ground operations of air freight forwarding, namely pickup and delivery to and from the airport, comprises legitimate messenger and trucking services.

27. Prior to the entry of Plaintiff in the Chicago area market, by virtue of the prolonged use, extensive sale and advertising of their services, Defendant-Counter-Claimants' aforementioned service mark had acquired secondary significance in connection with the messenger service in the local area.

28. The tradenames City Messenger of Hollywood, Inc. City Messenger Air Express, City Bonded Messenger and/or any tradename dominated by the word "City" and/or

the phrases "City Messenger" or "City Bonded Messenger", when used in connection with the sale, advertising or rendering of messenger, trucking, air freight forwarding or similar services, are confusingly similar to Defendant-Counter-Claimants' tradenames and the uses thereof by Plaintiff comprises unfair competition with Defendants.

29. Defendants' aforementioned service mark registration No. 609,732 is valid.

30. Plaintiff's use of said service mark in the sale, advertising or rendering of messenger, trucking and air freight forwarding services infringes Defendants' registered service mark.

31. Plaintiff adopted and used the aforementioned tradenames and service mark flagrantly and with full knowledge of Defendant-Counter-Claimants' prior use
110 thereof and with intent to unfairly compete and trade on Defendant-Colnter-Claimants' good will, valuable credit and financial standing and reputation for integrity and fair dealing.

32. Defendant-Counter-Claimants' credit, financial standing and reputation have been injured by Plaintiff's unfair competitive practices.

33. Plaintiff has unfairly diverted revenues for messenger services rightfully belonging to Defendant-Counter-Claimants, including, but not limited to, revenues from a large number of the transactions involving the Admiral Corporation, 3800 West Cortland Street, Chicago, Illinois, as represented in Defendants' exhibit 53, and from transactions with Kuttner & Kuttner, Inc., 646 North Michigan Avenue, Chicago, Illinois.

34. Were it not for the fraud and deceit of Plaintiff and the contract with the Plaintiff, Defendant-Counter-Claimants would have received revenues in the amount of approximately $500.00 per week for the rendering of ground

operation messenger service to Emery Air Freight alone and during the period from May 22, 1954 through February, 1955.

35. The "pay-outs" and messenger services rendered by Defendant-Counter-Claimants on behalf of Plaintiffs during the rendering of air freight forwarding services during the period from May 22, 1954 to January 10, 1955 amounted to $1,526.83.

111 36. Plaintiff is guilty of flagrant, unfair competition and the instituting of this action was vexatious and solely for the purpose of harassing Defendant-Counter-Claimants.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the subject matter and the parties involved.

2. The service mark in suit is valid and infringed by Plaintiff.

3. Defendants' service mark has acquired secondary significance in the local area as it pertains to messenger service.

4. The granting of a certificate of authority to Plaintiff to engage in the air freight forwarding business under the names City Messenger of Hollywood, Inc., doing business as City Messenger Air Express did not empower Plaintiff to use said names in derogation of the long established prior right of Defendants.

5. The service marks and tradenames of the bankrupt Modern Delivery Service were vested in the trustee in bankruptcy upon the filing of the petition in bankruptcy, and the mere filing of the petition in bankruptcy did not operate as an abandonment of the service mark or the trade names. No sale of said service mark or tradenames having been consummated, the same did not become avail-

able for use and appropriation by Plaintiff until after the discharge in bankruptcy on January 9, 1952.

112 6. The use by Plaintiff of the tradenames City Messenger of Hollywood, City Bonded Messenger and City Messenger Air Express or any tradename dominated by the word "City", the phrases "City Bonded" or "City Messenger", when used in the same area and in connection with the rendering of substantially similar services comprises unfair competition.

7. Plaintiff, who attempted by fraud and deceit to associate itself with Defendant and thereby surreptitiously enter the local market for the purpose of competing with Defendant under tradenames and using a service mark confusingly similar to Defendants' gained no right to use said tradenames and service marks in said area after said association was terminated.

8. Defendants have not engaged in unfair competition with Plaintiff, or diverted or appropriated anything belonging to Plaintiff.

9. Plaintiff has unfairly competed with Defendant-Counter-Claimants.

10. Plaintiff is guilty of fraud and deceit against Defendant-Counter-Claimants.

11. Plaintiff entered into a contract with Defendant-Counter-Claimants and subsequently breached said contract.

12. Plaintiff is guilty of bringing vexatious litigation against Defendants for the purpose of harassing them.

113 JUDGMENT ORDER

After a full and fair consideration of the evidence submitted in this case, It Is Hereby Ordered, Adjudged And Decreed That:

1. Defendants are entitled to an injunction restraining Plaintiff, its officers, agents, servants, employees

and attorneys and all acting under and through them and each of them from directly or indirectly:

a. Using the name City Messenger of Hollywood, Inc., City Messenger Air Express or City Bonded Messenger or any other name containing the word "City" or the phrases "City Bonded Messenger" or "City Messenger" or a service mark identical with or confusingly similar to Defendants' service mark, U. S. Registration No. 609732 Dated July 26, 1955, in connection with the sale, advertising, promotion or rendering of messenger, trucking, air freight forwarding service or any other service similar thereto in the City of Chicago, or within a 50-mile radius therefrom.

b. Doing anything having the effect of representing that Plaintiff's services emanate from Defendants.

2. Defendant-Counter-Claimants are entitled to an accounting of profits and damages and this case shall be and it is hereby referred to Warren E. Carbary, Esq., a Master in Chancery of this court, for determination of:

a. Defendant-Counter-Claimants' damages.

b. Plaintiff's profits.

114 3. Defendant-Counter-Claimants are entitled to punitive damages and an award of treble profits and damages.

4. Defendant-Counter-Claimants are entitled to an award of damages for breach of contract and fraud and deceit in the amount to be determined by the Master heretofore appointed.

5. Defendant-Counter-Claimants are entitled to recover the sum of $1526.83 in repayment for services

rendered and advances made on behalf of Plaintiff by Defendants.

6. Defendant-Counter-Claimants are entitled to an award of costs and disbursements against Plaintiff.
7. Defendant-Counter-Claimants are entitled to recover their attorneys fees from Plaintiff.

IT IS SO ORDERED

United States District Judge
/s/ John P. Barnes

Chicago, Illinois
Date: March 14, 1957

123 NOTICE OF APPEAL

Notice is hereby given that City Messenger of Hollywood, Inc., a California corporation, doing business under the tradename of City Messenger Air Express, plaintiff above named, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the final judgment entered in this action on March 14, 1957.

Normand Cohen,
Attorney for Appellant City Messenger of Hollywood, Inc., a California corporation, doing business under the tradename of City Messenger Air Express, 188 West Randolph Street, Chicago 1, Illinois.

Harry G. Fins,
Of Counsel.

163 United States of America,
Northern District of Illinois—ss.

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois do hereby certify that the annexed and foregoing are the original papers constituting the record on appeal in the cause entitled: City Messenger of Hollywood, Inc., a California corporation, doing business under the tradename of City Messenger Air Express, Plaintiff *vs.* City Bonded Messenger Service, Inc., by change of name from City Bonded Messenger and Trucking Service, Inc., an Illinois corporation, et al., Defendants, No. 55 C 575, as follows:

Complaint filed April 19, 1955

Answer and Counterclaim and Cross Claim of Illinois Bell Telephone Company, filed April 27, 1955

Answer, Counterclaim and Cross Claim of The Reuben H. Donnelley Corporation filed April 27, 1955

Answer and Counterclaim of Defendants City Bonded Messenger & Trucking Service, Inc., filed June 28, 1955

Notice and Motion of Defendant City Bonded Messenger & Trucking Service, Inc., filed August 12, 1955

Order entered August 12, 1955 granting leave to defendants to file their amendment to the counterclaim.

Amendment to defendant's Counterclaim Count III filed August 12, 1955

Answer to Counts I and II of Defendant's Counterclaim filed September 1, 1955

Order entered September 14, 1955 granting leave to plaintiff to withdraw motion to strike count 2 of defendant's counterclaim and granting leave to defendants to file amended count 2 of counterclaim.

164 Defendants' Amended Count II of Counterclaim filed September 27, 1955

Answer to Amended Count II of Defendants' Counterclaim filed October 11, 1955

Stipulation filed February 18, 1957

Order entered February 21, 1957 dismissing defendants Nadine Mansfield and Irving Mansfield as defendants

Amended Answer and Counterclaim, Amendment to defendants' Counterclaim Count IV filed February 28, 1957

Findings of Fact, Conclusions of Law and Final Judgment Order entered March 14, 1957

Order as to Defendants Illinois Bell Telephone Company and The Reuben H. Donnelley Corporation entered March 14, 1957

Order for additional security entered April 8, 1957, Notice attached thereto

Plaintiff's Notice of Appeal filed April 11, 1957 Clerk's Certificate of Mailing attached thereto

Motion for order to show cause why plaintiff should not be held in contempt of Court for Failure to comply with the order of Court entered April 8, 1957, filed April 19, 1957

Motion for order to show cause why plaintiff should not be held in contempt of court for violating the injunction and the order of Court entered March 14, 1957, filed April 19, 1957

Plaintiff's Answer to motion for Rule to show cause for alleged Violations of Final Judgment dated March 14, 1957 filed April 24, 1957

Defendants' Reply and Affidavit of Harry A. Shain filed April 26, 1957

Order entered April 29, 1957 entering and continuing generally motions of defendant filed April 19, 1957

Stipulation for record on appeal filed May 6, 1957.

165 and the Exhibits introduced in evidence and filed May 9, 1957, and the Clerk's File Copy of the Transcript of Proceedings had in the trial of this case and filed May 16, 1957 by the Official Court Reporter, certified as part of this record but for the sake of convenience, under separate certification, filed and entered among the records of the said Court in my office, on the dates indicated.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 17th day of May, 1957.

Roy H. Johnson

Clerk

By Gizella Butcher (signed)

Deputy Clerk